

1912-07 Chancery Causes: M. B. Rutherford vs. Joseph F. Johnson &c
Lee Co.

Folder 10/2

Elliott, Carroll, Leedy, Graham, Harber, Wygal

CA-Estate Dispute
T-Property

-Deed

To the Honorable H.A.W. Skeen, Judge of the Circuit Court for Lee County, Virginia.

Humbly complaining your orator M.B. Rutherford, a citizen of said County, would respectfully represent and show unto your honor that Joel Leedy, sometime in the year 1882, departed this life, in said County, intestate, seized and possessed of a valuable real estate lying and being in said County, on the main road about three miles west of Jonesville, Va., and leaving thirteen children as his heirs at law, and Elvira Leedy, his widow, to whom his said real estate descended; that in the year 1882, in a suit for partition of said real estate, dower was assigned said widow therein, and the said real estate, outside of said dower, partitioned among said heirs by Commissioners appointed for the purpose, a report and plat of said partition is of record in the Clerk's Office of said County in Deed Book No. 20, pages 126-7-8-9- 30-31, and in which report and plat said assignment of dower is described and defined by metes and bounds and as containing 76 acres, to which record of the said report and plat and the confirmation of the same, reference is here made.

Your orator will further represent and show unto your honor that nearly all of the heirs of said Joel Leedy, deceased, have sold and conveyed their interests in said real estate, both as laid off and assigned to them in said partition and also their undivided interests in the reversion in said dower. One J.K.P. Rutherford became the purchaser of the dower interest of said widow several years before her death, and also of several undivided interests in the reversion in said dower, and on the 16th day of March, 1891, he sold and conveyed to your orator 22 1/4 acres by metes and bounds in said 76 acre tract, and out of the interests owned by him therein, a copy of the deed for same is herewith filed as part hereof marked "A" and on which 22 1/4 acres your orator resides and has made permanent, valuable improvements; and on the 4th day of July, 1900, your orator purchased from Rosetta A. Leedy, one of said original heirs, her undivided interest in said 76 acres, and for which he has her deed

a copy of which is herewith filed as part hereof, marked "B".

Your orator further states that John Elliot, a son and heir at law of Selina Elliot, deceased, who was one of said original heirs, owns $1/7$ of $1/13$ of said 76 acres and Dock Carroll, a son of Mandana Carroll, deceased, who was one of said original heirs, owns $1/3$ of $1/13$ of said 76 acres.

And your orator is informed and no doubt it is true, that Joseph F. Johnson and his deceased wife, Lizzie Johnson, owned all of said tract or parcel of 76 acres of land ~~xxx~~ after the death of said widow, Elvira, some three or four years ago, except the $22\frac{1}{4}$ acres, and the undivided interest of Rosetta A. Leedy, owned by your orator, and the $1/3$ of $1/13$ owned by Dock Carroll and the $1/7$ of $1/13$ owned by John Elliot.

As before intimated, Lizzie Johnson, wife of said Joseph F. Johnson, departed this life intestate on the ____ day of _____ 18__, leaving the following children and heirs at law, to-wit: Ethel Johnson, Olin Johnson, Bradley Johnson, Roy Johnson, Herbert Johnson, and Truman Johnson, all of whom are infants under the age of twenty-one years, to whom her interest descended, and the said Elvira Leedy, widow as aforesaid, departed this life on the ____ day of _____ 19__, at which time her said dower interest in said tract or parcel of 76 acres of land, terminated.

Your orator further states that said tract or parcel of 76 acres of land is susceptible of partition among those entitled thereto in proportion to their respective rights and interests therein. And in tender consideration thereof and in as much as your orator is remediless in the premises save by the aid of a court of equity, where matters of this kind are alone and properly cognizable, your orator prays that Joseph F. Johnson, Ethel Johnson, Olin Johnson, Bradley Johnson, Roy Johnson, Herbert Johnson, Truman Johnson, John Elliot and Dock Carroll be made the parties defendants to this bill, and be required to answer the same, but they need not answer under oath that being waived; that a guardian ad litem be appointed to answer and defend the interests of said infant defendants in this suit; that an order of publication be made, posted and published against the

said John Elliot and Dock Carroll, who are not residents of this state; and that said real estate be partitioned among the parties entitled thereto and your orators portion allowed him, and the ~~said~~ share purchased by him from Rosetta A. Leedy be laid off adjoining the 22 1/4 acres purchased from said J.K.P. Rutherford; which he alleges can be conveniently done without any material injury to the rights or interests of the other parties concerned, and that his right of way as provided in his said deed from J.K.P. Rutherford and wife, dated 10th day of March, 1891, from his house to the main road through said real estate be laid down and defined in the partition herein prayed for.

And that such other further and general relief may be afforded your orator as the nature of the case requires, or to equity may seem meet. And your orator will ever pray &c.

James W. Orr Jr.

M. B. Rutherford
vs. Bill in Chancery.
J. F. Johnson et al.

Filed 2nd April
Ruler 1911.

H. C. T. Ewing

1911, 2nd Apr. ^{Clark.} Rules

Bill filed, Spa ex-
ecuted on Joseph
F. Johnson & D. M.
as to him.

" 1st May Rules

D. N. Confid. as to
Joseph F. Johnson
& cause set for
hearing as to him

And May Reel. Mrs.

G. A. L. filed

2nd July Rides

O.P. as to non-accidents

1st Aug. Rules

O.P. completed +
cause set for
hearing.

M. B. Rutherford

vs. { Bill in Chy.

Joseph F. Johnson et al

(Rule within)

Plffs Costs:

Ewing Clerk \$6.31

Eddle Clerk 1.20

Shff. .50

~~Atty. 15.00~~

G.A.R. 5.00

Printer 6.00

Notary fee 4.10
\$23.41

Depts Costs Rec.

Eddle Clerk .15

Atty \$15.00

Notary 7.00

Depos. (white 1.50

Shff. 4.50

\$25.15

M. G. ELY

COMMONWEALTH'S ATTORNEY

Jonesville, Virginia

To the Honorable H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

The answer of Joseph ^HJohnson to a bill filed in your Honor's court by M. B. Rutherford, or to so much thereof as it is necessary for him to answer, answering he says:

That he is now the owner of fifty-three and three-fourth acres of the dower assigned to Elvira Leedy, widow of Joel Leedy, deceased, as shown in the partition of said lands, recorded in Deed Book No. 20, pages 126, etc: and,

Your respondent will state that his vendor one J. K. P. Rutherford, who, as stated in said complainant's bill, became the purchaser of the entire dower interest of seventy-six acres; that said J. K. P. Rutherford purchased from the children and heirs at law of Joel Leedy, deceased, ~~seve~~ undivided reversionary interests in said tract of land; that the said M. B. Rutherford purchased ~~three~~ interests, deeds to which will be filed herewith if necessary; ~~that M. B. Rutherford purchased from the children and heirs at law of Joel Leedy, deceased, and that your respondent's vendor, J. K. P. Rutherford, and the complainant bought ten of those shares as heretofore stated; that said J. K. P. Rutherford agreed with the said M. B. Rutherford that he would sell him twenty-two and one-quarter acres of 1/4 the said dower and put him into possession of it, which was considered and valued by them at about one-third of the tract of land; that said M. B. Rutherford was to take into his possession the twenty-two and one-quarter acres; and as three of the children and heirs of Joel Leedy, deceased, had not sold their interest in the said dower making the said partition equal, the said M. B. Rutherford was to buy one of the said interests to make his title perfect and complete, and your respondent's vendor, J. K. P. Rutherford, was to buy the other two interests to make his title perfect and complete.~~ that there were thirteen children and heirs at law of Joel Leedy, deceased, and that your respondent's vendor, J. K. P. Rutherford, and the complainant bought ten of those shares as heretofore stated; that said J. K. P. Rutherford agreed with the said M. B. Rutherford that he would sell him twenty-two and one-quarter acres of 1/4 the said dower and put him into possession of it, which was considered and valued by them at about one-third of the tract of land; that said M. B. Rutherford was to take into his possession the twenty-two and one-quarter acres; and as three of the children and heirs of Joel Leedy, deceased, had not sold their interest in the said dower making the said partition equal, the said M. B. Rutherford was to buy one of the said interests to make his title perfect and complete, and your respondent's vendor, J. K. P. Rutherford, was to buy the other two interests to make his title perfect and complete.

Handwritten note on right margin: M. B. Rutherford purchased from the children and heirs at law of Joel Leedy, deceased, and that your respondent's vendor, J. K. P. Rutherford, and the complainant bought ten of those shares as heretofore stated; that said J. K. P. Rutherford agreed with the said M. B. Rutherford that he would sell him twenty-two and one-quarter acres of 1/4 the said dower and put him into possession of it, which was considered and valued by them at about one-third of the tract of land; that said M. B. Rutherford was to take into his possession the twenty-two and one-quarter acres; and as three of the children and heirs of Joel Leedy, deceased, had not sold their interest in the said dower making the said partition equal, the said M. B. Rutherford was to buy one of the said interests to make his title perfect and complete, and your respondent's vendor, J. K. P. Rutherford, was to buy the other two interests to make his title perfect and complete.

Your respondent alleges that the said M. B. Rutherford

bought one of the heir's interest, to-wit, the interest of Rosetta Leedy as shown by his deed filed with his bill, and your respondent's vendor proceeded to purchase the other two interests as best he could to make his his title perfect and complete, and as set out in said bill has purchased all the interest except one-third of one-thirteenth, to-wit, the interests of Doc Carroll and one-eighth of one-thirteenth of John Elliott.

Your respondent admits that they have their interests in said seventy-six acre tract of land, but that if it is to be assigned and laid off that it is to be taken out of your respondent's fifty-three and three-quarter acres and not out of any part of the twenty-two and one-quarter acres conveyed to M. B. Rutherford; and that the interest of Rosetta Leedy was to be in the twenty-two and one-quarter acres conveyed to M. B. Rutherford and is not to be taken from your respondent's part of the seventy-six acre dower tract of land.

Your respondent denies that the purchase of Rosetta Leedy's interest entitled him to have anything laid off out of your respondent's land, and denies that he has any interest by reason of his purchase whatever, pursuant to the agreement made at the time he received his deed from J. K. P. Rutherford, in any event if said M. B. Rutherford is to have one-thirteenth assigned out of your respondent's land, your respondent is entitled to have two-thirteenths purchased by him since the purchase of the Rosetta Leedy interest, except the fractional parts heretofore mentioned, laid off to him out of the said M. B. Rutherford's twenty-two and one-quarter acres; and,

Your respondent asks the court to set off against the complainant's claim his two-thirteenths which he owns by purchase from the children and heirs at law of Joel Leedy, deceased, against the one-thirteenth claimed by the complainant. Yet your respondent prays that said complainant's bill be dismissed

limited in scope

as to your respondent because he has no interest whatever in your complainants land, and the said John Elloit and Doc Carroll has no interest whatever in your complainant's land according to the agreement made between M. B. Rutherford and J. K. P. Rutherford, and the said dower partitioned and J. K. P. Rutherford deed^d to the complainant his said twenty-two and one-quarter acres, and your respondent prays hence to be dismissed with his reasonable costs in this behalf expended. And he will ever pray, etc.

Mr. G. E. G.

p.d.

James W. Orr, Jr.

The foregoing answer of Joseph Johnson, is excepted to, because it sets up no legitimate, or sufficient, defense to plaintiff's bill, to part agreement between the parties that is intended to contradict, vary or alter the unwritten contracts between the parties, as shown by the deeds between the parties, can he set up in conflict with said deeds. ^{and because the exhibits are not filed with said answer.} December 6th 1911.

James W. Orr, Jr.

J. F. Johnson et al.
Consensus
ad. J. F. Johnson

M. B. Rutherford

Filed Sept 5 1911.

H. C. J. Ewing,
Clerk.

To the Honorable H.A.W. Skeen, Judge of the Circuit Court of
Lee County, Virginia:

The answer of Ethel Johnson, Olin Johnson, Bradley Johnson,
Roy Johnson, Herbert Johnson and Truman Johnson, infants under the
age of twenty-one years, by Geo. P. Cridlin, the Guardian ad litem
assigned to defend them in this suit to a bill of complaint exhibited
against them and others in the Circuit Court of Lee County, by M.B.
Rutherford.

Respondents reserving to themselves the benefit of all just ex-
ceptions to the said bill for answer thereto, or to so much thereof
as they are advised that it is material to answer same, by their said
guardian ad litem, answering they say:

That they are infants of tender years, and by reason of their
infancy, are incapable of understanding, or of taking care of their
rights and interests. They, therefore, by their said Guardian ad
litem, commend themselves and their rights and interests to the pro-
tection of the Court, and pray that no decree may be pronounced
which will ten to their prejudice.

And now having fully answered, said respondents pray to be
hence dismissed with their costs.

Geo. P. Cridlin
Guardian ad litem for Ethel, Olin,
Bradley, Roy, Herbert and Tru-
man Johnson.

Sworn to this the 29th day of April, 1911.

H. C. I. Ewing, Clerk.

Edith Johnson et al.
vs { Sub of G. A. L.
3
M. B. Rutherford.

Filed April 29, 1911.
H. C. J. Ewing,
Clerk.

M. B. Rutherford, Plaintiff.
vs. In Chancery.
J. F. Johnson, et als..... Defendants.

This cause came on this day to be heard upon the bill of complainant, exhibits therewith, the answer of the infant defendants by Geo. F. Cridlin, their guardian ad litem, duly sworn to, the answer of J. F. Johnson and general replication to both of said answers, and was argued by counsel.

On consideration of which it is adjudged, ordered and decreed that said cause be continued.

Mr. B. Rathbun
Dear Sir

E. F. Johnson

Entered in C.O.B.
No. 9 page 207

Electric this

H. A. W. S. H. S.

Sept. 8th 1916

M. B. Rutherford.....Plaintiff.
vs. } IN CHANCERY.
Joseph F. Johnson, et al.....Defendants.

THIS CAUSE came on this day to be heard upon the bill of complainant and exhibits filed therewith, the answer of defendant, Joseph F. Johnson, and exhibits filed therewith, the answer of the infant defendants by G. P. Cridlin, their guardian Ad Litem, duly sworn to, general replication to all the said answers, and depositions of witnesses for plaintiff and defendant. And was argued by counsel.

On consideration of which, the Court is of the opinion that the complainant has no right to maintain this suit; that the partition made at the time the deeds were executed in 1891 was made pursuant to an agreement that was valid and binding at the time, and it left the said M. B. Rutherford to purchase one-thirteenth in the reversionary interest to complete his title to the 22 1/4 acres, and the said J. K. P. Rutherford to purchase two-thirteenths to complete his title to his 53 3/4 acres; and that in pursuance of said agreement, the said complainant purchased the undivided reversionary interest of Rosetta A. Leedy, and the Court, therefore, adjudges, orders and decrees that her said interest be and the same is contained within the 22 1/4 acres deeded by J. K. P. Rutherford to M. B. Rutherford, and that the other two-thirteenths to be purchased by J. K. P. Rutherford to be in the 53 3/4 acres. And it being proved that all of said two-thirteenths have been purchased except the interests of Dock Carroll and John Elliot, it is decreed that their interests be, and the same are in the 53 3/4 acres; and that Joseph Johnson's title to his said 53 3/4 acres is quieted as to any interest the said Rosetta A. Leedy or M. B. Rutherford may claim in said tract. *And the plaintiff's title to the 22 1/4 acres, and his right of way therefrom to the main road, as provided in his deed for same, is also quieted.*

And it is further ordered and decreed that the parties in interest in this suit who have filed original deeds with their depositions have permission to withdraw the same; and that said plaintiff's bill be dismissed at his cost, and the said Joseph F. Johnson recover of the said M. B. Rutherford his costs in his behalf expended, including legal attorney fee, all of which is to be taxed by the Clerk, and for which execution may issue. And nothing further remaining to be done the cause is stricken from the docket.

And on motion of the plaintiff who suggests that he feels aggrieved by the decree of the Court rendered against him, the execution of said decree is suspended for sixty days, upon the said plaintiff executing bond before the Clerk of this Court in the penalty of One hundred dollars conditioned according to law.

M. B. Rutherford
vs. E. E. Devere
~~J. H. P. H.~~
J. F. Johnson et al

Entered in C. O. B.
No 9, page 2691c

Enter this

H. A. W. Siler

Feb. 16 - 1911

The depositions of M. B. Rutherford, and _____ taken before the undersigned Notary Public for Lee County, Virginia, at the Law Office of Jas. W. Orr, Jonesville, Va. by consent of parties, on the 11th day of January, 1912, to be read as evidence in a certain suit in chancery pending in the Circuit Court of said County in which said M. B. Rutherford is plaintiff and J. F. Johnson, et al, are defendants.

Present: Plaintiff and his counsel.

Defendant J.F.Johnson and his counsel, and Geo.P. Cridlin, guardian ad litem for the infant defendants.

M. B. Rutherford a witness of lawful age, after being duly sworn, deposes and says.

Chief examination by plaintiff's counsel.

Q. Please state your age, residence and occupation?

The testimony of this witness is objected to because Lizzie Johnson, former wife of the defendant J. F. Johnson, is dead, and this witness is incompetent for that reason to testify in this case.

C. T. Duncan.

A. Fifty-four years old; reside west of Jonesville about three miles, and am a farmer.

Q. Are you the plaintiff in this suit?

A. I am.

Q. Please state how many shares or interests you own in the seventy-six acre dower lot or tract of land in the bill mentioned and from whom you purchased those interests?

A. I owned five shares. I purchased one of the interests from *Robert L. Leedy*; C. B. Fleenor and wife two shares; one share from Isaac Leedy and one share from Joseph Leedy.

The foregoing answer is objected to as evidence because if he owned said shares as he has described his ownership thereof is in writing and the writing is the best evidence.

Counsel for defendant.

Q. Did you obtain deeds for those interests and, if so, will you please file the same with this your deposition, marked deed "1" "2" "3" and "4" respectively, with the right reserved to withdraw the deeds when this suit is determined?

A. I have deeds and here file the same marked deeds "1" "2" "3" and "4".

Q. State whether or not, at any time, you sold and conveyed any of your interests in the said seventy-six acre tract and, if so, whom to and what interests did you convey?

A. I conveyed J. K. P. Rutherford the five interests deeded by me to him on March, 16th 1891, and I file the deed of the said five shares as exhibit deed number "5" with same reservation.

Q. State whether or not in the trade made by you with J.K.P. Rutherford when you conveyed him the five shares, he conveyed to you any land and, if so, what he conveyed?

The foregoing question and any answer thereto objected to because the deed is the best evidence thereof and speaks for itself.

Counsel for defendant.

A. He conveyed to me twenty-two and one-quarter acres the same day I conveyed him the five shares.

Q. Will you please file a copy of said deed with your deposition as part thereof, marked "A"?

A. A copy of said deed is exhibit with the bill marked "A".

Q. State whether or not the twenty-two and one-quarter acres conveyed to you by J. K. P. Rutherford is in your possession and whether or not that is the piece of land on which you built and

now reside?

A. Yes, sir. It is in my possession and has been ever since the deed was made. There was a small building on it when I got it, a small stable and crib. I have since improved the buildings and added to them, cleared and fenced land, and have lived there nearly twenty years perhaps in next March.

Q. State whether or not after you traded with J. K. P. Rutherford you purchased any other or further interest in the seventy-six acre tract and, if so, from whom and when?

A. Some eight or nine years afterwards I bought Rosetta A. Leedy's interest or share. I see the deed is dated July, 4th, 1900, and a copy thereof is filed with the bill marked "B".

Q. Do you still own the Rosetta A. Leedy interest and is it undivided?

A. Yes, sir, I still own it and it is undivided.

Q. At the time you traded with J. K. P. Rutherford and conveyed him five undivided interests in the seventy-six acre tract, how many interests did he own in that tract, if you know?

A. I know of his owning three shares and he claimed that he bought two other shares, but I never saw the deeds.

Q. At the time of said trade how many shares remained outstanding or unsold at that time?

A. Three shares- Mandana Carroll, Selina Elliot and Rosetta A. Leedy.

Q. Is Mandana Carroll and Selina Elliot dead or living?

A. They are dead. They died leaving some children to whom their interests descended.

Q. State whether or not Rosetta A. Leedy was the ^{youngest} ~~only~~ child of Joel Leedy, deceased?

A. Yes, she was the ^{youngest} ~~only~~ child.

Q. At the time you traded with J. K. P. Rutherford was she

of age nor not?

A. No sir. After we traded she became of age in about eight or nine years, is my information.

Q. Did you purchase her interest soon after she arrived at twenty-one years of age?

A. Yes, sir.

Q. CROSS EXAMINATION.

Q. Where is the original deed from J. K. P. Rutherford to your twenty-two and one-quarter acres of land?

A. I have it here with me.

Q. At the time you and J. K. P. Rutherford partitioned the seventy-six acre dower tract of land is it not a fact that you conveyed to J. K. P. Rutherford only two shares which you owed?

This question and any answer thereto is excepted to be-
cause no partition is shown, and because, as to the interest con-
veyed, the deed of the plaintiff to J. K. P. Rutherford is the best
evidence and cannot be contradicted, varied or altered by any pa-
rable statement or evidence.

Jas. W. Orr.

A. I deeded him five shares.

Q. I hand you the deed that you file purporting to convey five shares, I will ask you to please explain why it refers to two shares at the main road and then goes on and attempts to describe three other shares and, also, explain why three and one has been rubbed out and changed?

A. I cannot read and I will leave it with you gentlemen to take the deeds and read them.

Q. Who had had possession of these deeds ever since they were made?

A. The deed for the twenty-two and one-quarter acres I have had myself, and the other one to J. K. P. Rutherford came out of the Clerk's Office.

Q. How long has it been since you got it out of the Clerk's Office?

A. It was since this suit was brought.

Q. Is it not a fact that you and J. K. P. Rutherford together owned ten of the undivided reversionary interests in this dower tract of seventy-six acres, and that J. K. P. Rutherford owned all the dower interest, and that you and J. K. P. Rutherford agreed to a partition of it on the day that your deed was made to you and you made a deed to him?

Objection.

The foregoing question and any answer thereto objected to for the same reasons above stated.

Jas. W. Orr.

A. We did own ten shares. We agreed to divide the land and he was to let me have so much ~~xxxx~~, if he conveyed him five shares at \$100.00, and he deeded me back twenty-two and one-quarter acres at \$158.00, and when the deed was drawn up I paid him \$138.00 in hand paid and give him a vendor's lien for \$20.00 in the deed and that was to be paid in twelve months, and I have got a receipt to show that that \$20.00 is paid.

Q. And you conveyed to each other whatever interest you might have in each others shares, did you?

A. The foregoing question is objected to because the deeds are the best evidence and will show for themselves, and all questions intending to contradict, vary or alter the written contract as shown by the deeds are excepted to as inadmissible.

Jas. W. Orr.

A. I told you exactly how it was done.

Q. At the time you partitioned this and made such deed to each other did you and J. K. P. Rutherford know that there were three shares in that dower tract still outstanding?

A. Yes, sir, we did.

Q. Was it not agreed with you and him at that time that you would buy one of these shares outstanding and he would buy two and that would complete your titles?

A. We talked about it.

Q. And in pursuance of that agreement didn't you go on and buy one interest, and didn't he attempt to go on and buy his two interests as agreed on, and hasn't he bought all of these two interests except one-seventh of one-thirteenth and one-third of one-thirteenth?

Excepted to because intending ~~to~~ to contradict deed, which cannot be done, and the same is, therefore, inadmissible.

Jas. W. Orr.

A. *The* way I understand it is, when I conveyed ~~them~~ five shares of land to J. K. P. Rutherford and he conveyed me twenty-two and one-quarter acres of land, I was not dealing with J. K. P. Rutherford then, I was up with him, and then I had to deal with Rosetta A. Leedy and I bought her interest and he bought some of the other interests and he has not bought some of them yet.

Q. You say that an agreement was talked about between you and Mr. Rutherford that you would buy one share that had not been bought, and that he would buy two shares. Now is it not a fact that you bought your one share and that he attempted to buy his two shares?

A. I bought my share, and paid for it, and he attempted to buy his two shares.

Q. Do you know how much he did buy of the other two shares?

A. No, I don't recollect how much he bought.

The foregoing questions and answers thereto objected to for the reasons above stated because intending to contradict or vary the written contract or deeds between the parties.

Jas. W. Orr.

Q. Is it not a fact that you bought the Rosetta A. Leedy interest pursuant to the agreement that you had made with J.K.P. Rutherford that you were to buy one more share to perfect your title and he was to buy two more shares to make his title perfect?

A. No sir. I didn't make no such an agreement.

Q. Do you claim you ~~one~~ one-thirteenth interest in your own tract or just out of the Johnson tract, or both?

A. I claim that interest in that dower land. That is what I claim in the seventy-six acres.

Q. Which is worth the most to you one-thirteenth out of Johnson's fifty-four acres or two-thirteenths out of your twenty-two acres?

A. The foregoing question excepted to for the same reasons above stated.

Jas. W. Orr.

A. One-thirteenth of Johnson's is worth the most.

Q. Is it not a fact now that the value would be equal, and that that was the intention when you and J. K. P. Rutherford divided that land?

The foregoing question excepted to for the same reasons.

Jas. W. Orr.

A. I cannot see that that was our intention at all.

Q. I want to ask you if you didn't tell Milt Harber down there in your community somewhere sometime along last fall when he was working on the school house that you and J.K.P. Rutherford had

divided this land and deeded to each other your interests, and you were to buy one share to make your title perfect and he was to buy two shares to make his title perfect?

The foregoing question and any answer thereto excepted to for the same reasons above stated.

Jas.W.Orr.

A. No, sir. I did not.

Q. I want to ask you if you did not have the same talk to Charlie Graham and Newt Wygal wherein ^{you}~~he~~ claimed such.

The foregoing question excepted to for the same reasons.

Jas.W.Orr.

A. I don't recollect having any talk to Newt Wygal at all and I don't recollect saying ~~anything~~ that to Charlie Graham. I have no knowledge of telling Mr. Graham any such stuff as that.

Q. Didn't you admit to me in my Office just a short time before you brought this suit that that was the agreement, but that you were now standing on your deeds?

A. I don't recollect having any such talk.

Q. Do you not remember telling me that you was going to bring suit and stand on the papers and not allow anybody to testify?

A. I don't recollect any such stuff as that.

The foregoing questions and answers objected to for the same reasons as above stated.

Jas. W. Orr.

Q. Do you claim now that you only own the one-thirteenth interest that you bought from Rosetta Leedy in the dower land?

A. Yes, that is the only share outside of the twenty-two and one-quarter acres.

Q. Is it not a fact that John Elliot owns one-seventh of one-

thirteenth in the twenty-two acres as well as in the fifty-four acres; and that Dock Carroll owns one-third of one-thirteenth, in the whole seventy-six acre tract, yours as well as Johnson's?

The foregoing question excepted to for the same reasons.

J.W.Orr.

A. Yes, they own it.

Q. Why is it that you are not willing for us to have the Carroll and Elliot interests in our fifty-four acres and you take Rosetta Leedy's interest in your own twenty-two acres?

A. I bought the twenty-two acres and I paid for it and I made him a deed for the five shares, then I went on and bought Rosetta A. Leedy's. It was ~~xxxxxx~~ Rosetta Leedy's entire interest and I bought it.

Q. Her interest was in your twenty-two acres and his fifty-four both was it not?

A. I cannot understand it that way. Her interest was in the seventy-six acres and undivided.

Q. Did you buy twenty-two and one-quarter acres from J.K.P. Rutherford or did he only convey to you his interest in that twenty-two and one-quarter acres?~~xxxxxx~~

The foregoing question objected to for the reasons above stated.

Jas. W. Orr.

A. He conveyed me twenty-two and one-quarter acres.

Q. Did you or not at the same time convey to him your interest in the reversion of the dower tract?

A. I conveyed him then five shares.

Q. I see the deed of the 16th of March, 1891, from J. K. P. Rutherford and wife to you mentions a consideration of \$158.00. How was that paid, if paid at all?

A. I paid him \$138.00 when the deed was drawn up, and a

vendor's lien for \$20.00, I believe it was, retained in the deed to be paid in twelve months.

Q. How did you pay that \$138.00?

A. I conveyed him five shares at \$100.00. I don't remember how I paid the \$38.00 and at the end of twelve months I paid the \$20.00.

Q. At the time you conveyed to him the five shares, and he made this deed back to you for the twenty-two and onequarter acres, your entire interest in the land was the five shares was it not, and his entire interest in it was the five shares he owned and the entire dower of the widow wasn't it?

A. Yes, he owned five shares and the dower.

Q. And your purpose and his at that time was to lay off to you your interest on account of the shares that you already owned and the interest which you had agreed to buy wasn't it?

A. I have no recollection of it being laid off. He could not lay off a thing he didn't own and I could not deed a thing I did not own.

Q. If you owned the interest of Rosetta Leedy in this land and it had not been settled between you at the time this deed was made by him agreeing to buy the Elliot and Carroll interests and you Rosetta Leedy's interest, how did it come that you waited from 1891 to 1900 the time you bought this Rosetta Leedy interest and made a deed to you for this land, until eleven years before you brought this suit to recover it?

A. The deed I thought was lost.

Q. You knew you had paid for it didn't you?

A. I recollect that.

Q. Now, if you recollect that, even though the deed was misplaced, how did you come to wait eleven years until you instituted

this suit?

A. Mrs. Leedy was living when the deed was made to me and in the contract I was not to have it until her death and when my ~~brother~~ ^{son} went west and came back he said Mrs. Leedy was dead- that has been some three years ago since he came back from the west.

Q. Don't you know when she died?

A. No, sir.

Q. Well, then if you were waiting for Mrs. Leedy to die, how did it come that you waited three or four years longer before you instituted this suit if you thought that you had any right in the matter at all?

A. It went on until there came up a trade. A man by the name of John ^{Neck} was talking about buying Johnson's land and my part, and he examined the records and he found there was a share belonging to me in that land, also the Carroll share, and he didn't trade. And a fellow by the name of Skeen started to buy it and Johnson came up here to make a deed and he ^{could not} ~~could not~~ make it good by some means.

Q. You say the first time that you ever found out that you had any interest in this land, or the first time you wanted to assert any interest in this land, was eleven years after you purchased it, and three to four years after you knew Mrs. Leedy was dead, and not until J.F. Johnson was troubled about selling it, is that not a fact?

A. Yes that was a fact.

RE-EXAMINATION.

Q. If I understand you correctly you purchased from J. K. P. Rutherford twenty-two and one-quarter acres out of the interest he owned in the reversionary interest in the dower and it ^{was} ~~is~~ laid off and defined by meets and bounds and conveyed to you. Is that correct?

A. Yes, sir.

Q. Then, if I understand you, ~~after~~ you bought Rosetta A. Leedy's interest some eight or nine years after you traded with J. K. P. Rutherford?

A. Yes, sir.

Q. The widow Leedy was then living and continued to live until three or four years ago according to your information?

A. Yes, sir.

Q. You did not consider that you were entitled to your interest purchased from Rosetta A. Leedy until the death of the widow, did you?

A. That was my understanding.

Q. If I understand you, you claim under your deed from Rosetta Leedy a one-thirteenth undivided interest in the seventy-six acres?

A. Yes, sir.

Q. But you claim that that one-thirteenth, on account of the deed of J. K. P. Rutherford to you for the twenty-two and one-quarter acres out of his interest, ~~and~~ should be laid off to you out of the fifty-four acres?

A. That is my understanding.

Q. You then claim, do you not, the twenty-two and one-quarter acres by virtue of your purchase from J. K. P. Rutherford, and in addition to that, one-thirteenth of seventy-six acres outside of the twenty-two, one-quarter acres?

A. That is what I claim.

Q. All the foregoing questions are objected to because leading. Counsel for defendant.

Re-Cross-examination.

Q. Who surveyed your twenty-two and one-quarter acres when

J. K. P. Rutherford deeded it to you?

A. E. C. Elliot. He run around the whole tract of land- the seventy-six acres and then laid off to me twenty-two and one-quarter acres.

This question and answer thereto is excepted to because intended to be in conflict with the deeds, and the deed is an absolute conveyance of the twenty-two and one-quarter acres by meets and bounds and purports to be out of the J. K. P. Rutherford interest in the seventy-six acres, and is the best evidence.

James H. Orr.

Q. At the time these two deeds were made by you and J. K. P. Rutherford, the one by you to J. K. P. Rutherford and the other by J. K. P. Rutherford to you, did you own any other interests in this land at the time than the five shares which you undertook to convey to J. K. P. Rutherford?

A. No, sir.

Q. And you never paid any other money except the \$20.00 that you had borrowed from J. K. P. Rutherford back to him did you?

A. I deeded him the five shares at \$100.00 and then I paid him in hand paid \$38.00 and a vendor's lien was retained in the deed he made to me for the \$20.00 and twelve months after I paid it. I have got a receipt in my pocket.

Re-re-examination in chief.

Q. I show you a receipt which you seem to have in your possession for \$21.20 dated 16th day of November, 1982, and signed J. K. P. Rutherford. State what this receipt was for?

Objection.

The foregoing question objected to because the receipt itself shows what it is for. C. T. DUNGAN.

A. That was to show that I had paid the \$20.00 and its interest.

Q. Will you please file said receipt with your deposition as part thereof marked "Receipt \$20.00"?

A. I file the same as requested.

Re- Cross examination.

Q. Who wrote that receipt?

A. I thought George Plankenship wrote it, but I am told that it is not his hand writing and perhaps I am mistaken.

And further this deponent saith not.

Signature waived.

The foregoing deposition of M. B. Rutherford was duly taken and sworn to before me on the 11th day of January, 1912, and for the purpose in the caption mentioned.

Given under my hand this the 11th day of January, 1912.

Golden Barton N.P.

M. B. Rutherford

vs. Deposition.

J. F. Johnson, et al.

Filed Jan. 27, 1912

J. D. Edds, Clerk

Notary Fee \$4.10. BOM.
April 6th 1912.

19

20

\$21.20

21

22

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32

Received of M. B. Rutherford the
sum of twenty dollars and twenty cents
being amount in full of all demands
against said Rutherford to date.

Given under my hand this, 16th day of
November 1892.

James H. F. ^{Ris} Rutherford
wash

Attest:

G. W. Packard

M. S. Kearney

15
14
13
12
11
10
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1
M. B. Rutherford
From { Receipt
for \$21.20
J. K. P. Rutherford
Date: Nov. 16/92.

Recd \$20.00
with chgo.

"RECEIPT \$20.00"

The depositions of J. K. P. Rutherford and others taken at the Law Office of M. G. Ely, Jonesville, Virginia, on January, 11th, 1912, pursuant to agreement, before Me, Golden Barton, a Notary Public of Lee County, Virginia, to be read as evidence in behalf of the defendants in a certain suit pending in the Circuit Court of Lee County, wherein M. B. Rutherford is plaintiff and Joseph F. Johnson, and others, are defendants.

Present: Plaintiff and his counsel.

Defendant J. F. Johnson and his counsel,

Geo. P. Gridlin, Guardian Ad Litem for the infant defendants.

W. K. P. Rutherford a witness of lawful age, after being duly sworn, deposes and says:

Q. State your age, residence, and occupation, and whether or not you are the J. K. P. Rutherford who once owned the land in controversy in this suit?

A. Sixty-seven years old; reside at Jonesville, Virginia, occupation farming, and I am the same man who once owned that land.

Q. Please state whether or not you once owned the seventy-six acre dower tract of land laid off and assigned to Elvira Leedy, widow of Joel Leedy, deceased, and if you say you did, state how you came into possession of it?

A. Yes, I once owned that land. I bought the dower from Elvira Leedy, the widow of Joel Leedy, deceased, at the sum of \$275.00. Boyd paid a part of it I don't remember how much, but you see he bought five shares and he deeded me them five shares at \$100.00 and borrowed \$20.00 and paid his part in the other five that was not bought and his part to the widow.

The foregoing question and answer is excepted to as inadmissible. The deeds between the parties is the best evidence.

Jas. W. Orr, for plaintiff.

Q. State whether or not at the time you purchased the dower and Boyd deeded the five shares which he deeded to you, you owned any other shares in the dower?

A. Not at that time.

Q. How many shares did you buy after he deeded you the five shares?

A. Two.

Q. How many more did he buy after that?

A. I suppose he bought three.

The foregoing questions and answers are excepted to for the same reasons- the deeds are the best evidence.

Jas. W. Orr.

Q. State, if you remember, what two shares you bought after Boyd deeded you the five?

A. Ellen Miles and Rufus Leedy shares.

The foregoing question and answer excepted to for the same reasons as stated above.

Jas. W. Orr.

Q. Can you state what three other shares Boyd bought?

A. I don't know only the Joe Leedy share. I know he got that. He went to buy Joe Leedy's share for me, I furnished the money, when he came back he claimed that he had to have the deed made to Boyd as he lived in Tennessee, and then after that he bought Ellen Miles's share at \$25.00 and he had the deed made to me instead of the Joe Leedy Share.

The foregoing question and answer excepted to for the same reasons.

Jas. W. Orr.

Q. Please state if you know who bought Alfred Leedy's share?

A. I don't know.

Q. Do you know that you did not buy it?

A. Not unless it was one of the shares Boyd owned.

Q. Please state all you know with reference to the partition of this dower tract of land between you and Boyd and when it was and what the agreement was?

A. I don't remember the exact date. The deeds show the proper date. . . This old widow Elvira Leedy she moved off to Iowa and Boyd had the place rented and he owned five shares in that and she was trying to sell this land, and he deeded to me them five shares to get money to help pay his part to the old widow for the other five shares. He deeded them to me at \$100.00, and he borrowed \$20.00 from me and it was to be paid back in twelve months. And after we got the old widow's dower bought out and the other five shares, we made the divide, and we owned ten shares and the widow's dower, and when we made the divide there was three shares outstanding and it would take one of them to make Boyd's title perfect and two to make mine, and I was to buy two to make my title perfect and he was to buy one. There was a little narrow strip that run away back across the road and he didn't want to take that and let me have mine all together as it did not suit him and I agreed with him to take that land as it was the best on the place, and I was to have a right of way to haul anything I wanted to off of it.

The foregoing question and answer thereto, and all others intended to contradict or vary the writings and deeds between the parties, are excepted to because inadmissible.

Jas. W. Orr.

Q. Was it not a fact that at the time you and Boyd partitioned the land that it was agreed between you that Boyd should buy one other interest and you two other interests?

A. That was my understanding. That was the contract the way I understood it.

Q The foregoing question and answer excepted to for the reasons above stated.

Jas. W. Orr.

Q. In pursuance of that agreement did Boyd buy one other interest?

A. Yes, sir.

Q. The foregoing question and answer excepted to for the reasons above stated.

Jas. W. Orr.

Q. And did you proceed to buy the other two interests?

A. Yes, sir. I did.

Q. Excepted to for the reasons above stated.

Jas. W. Orr.

Q. What part of the other two interests have you bought up to this time?

A. I have bought two-thirds of one interest and six-sevenths of the other.

Q. When did you first hear that M. B. Rutherford was claiming an interest in this land now owned by Mr. Johnson which you once owned?

A. I think it was last March term of Court- I believe it was.

Q. Do you know how he happened to set up claim to it?

A. No, sir. I do not.

Q. Did he ever set up any claim to any interest in that land by reason of his purchase from Rosetta Leedy when you owned it?

A. The land was sold three times and nothing was claimed up to that time that ever I heard of.

Q. Is he or not entitled to have any interest laid off to him out of the J. F. Johnson land?

A. No, sir, he is not.

Q. The foregoing question and answer excepted to for the reasons above stated.

Jas. W. Orr.

Q.

If it had been laid off to him state whether or not J. F. Johnson, as your vendee, should have two-thirteenths laid off out of his land?

A. It does look like he ought.

The foregoing question and answer is excepted to for the reasons above stated.

Jas. W. Orr.

Q.

But it was yours and his original intention pursuant to your agreement that the two-thirteenths should be in your share and the one-thirteenth in his. Is that correct?

A. Yes, sir, that was our agreement.

The foregoing question and answer thereto excepted to because leading and for the same reasons above stated.

Jas. W. Orr.

CROSS EXAMINATION.

Q.

Is it not a fact at the time M. B. Rutherford conveyed to you his five interests in the seventy-six acre tract of land and in the reversion in the dower, that you also owned five interests in that tract and ⁱⁿ that reversionary interest?

A. No, sir. I only owned two outside of that- that was the Rufus Leedy and Ellen Miles and that was all I owned outside of the five shares Boyd deeded to me.

Q.

It is a fact that M. B. Rutherford conveyed to you five shares or five-thirteenths in the reversion in said dower, is it not?

A.

Yes sir. He conveyed me five shares.

Q.

His deed was made March, 16th, 1891, was it not?

A.

I see that is the date of the deed.

Q.

Joseph Johnson in his answer in this case states that M. B. Rutherford purchased three interests in the seventy-six acres and sold and conveyed the same to you, how does it happen that he alleges that Boyd owned three interests?

A.

After he conveyed the five he bought three more.

Q. Was it not changed from five interests to only three interests at your suggestion and by your direction?

A. Yes it was. He only had three interests after conveying them five away on up until he bought Rosetta A. Leedy's interest. That gave him four interests.

Q. If M. B. Rutherford at the time he made his deed to you for five shares March, 16th, 1891, only owned three shares or interests in said tract of land, how did it happen that you accepted the deed from him for five shares?

A. He owned five and deeded them to ~~them~~^{me} and bought the three afterwards.

Q. Then you have no conveyance from M. B. Rutherford for the three shares bought by him after you traded with him?

A. He conveyed to me his interest and I conveyed to him mine after we had bought the ten shares from the old widow. There never was a foot of land bought by Boyd from me only on a partition of our interest.

Q. If M. B. Rutherford never bought a foot of land from you how did it happen that you, on the same day he conveyed five shares to you, conveyed to him twenty-two and one-quarter acres out of the ~~interest~~ interests you owned in said tract of land?

A. He said that it would have to be ~~xxxx~~^{divided} that way after we had bought them ten shares and he said I would have to make him a deed. I deeded him what was supposed to be four shares and deeded to him the other one provided we got them. We didn't know whether we would get them three shares that was outstanding. After we made these deeds I was to buy two shares to make my title perfect and he was to buy one to make his perfect.

The foregoing answer excepted to because not responsive to the question.

James W. Orr

Q. At the time that you and M. B. Rutherford made your deeds to each other and which are exhibited in the case, bearing date of March, 16th, 1891, who owned the widow's dower at that time?

A. Me and Boyd together. It was deeded to me individually but it ought to have been deeded to both of us. The reason why he sold me the five shares was to get money to pay his part of the purchase price of the dower of the other shares.

Q. Had not the dower already been paid for to the widow?

A. We paid that before that time.

Q. If the dower was already paid for why should Mr. M. B. Rutherford sell you five shares to raise money to pay his part of the dower?

A. He deeded me them before the dower was paid for. The agreement had been made between us prior to that time and the dower ~~ex~~ purchased and paid for.

Q. When was the widow's dower conveyed to you?

A. I don't recollect the exact time. Just a short time before me and Boyd traded the deed she made to me I turned over to Trav Flanary.

Q. You have said something about a partition between you and M. B. Rutherford, was there any written deed of partition between you?

A. I reckon there was.

Q. What do you know about it?

A. We got this old man, J. B. West, he drew the deed up for us.

Q. Was that not the two deeds dated March, 16th, 1891, one you made to him and one ^{he} made to you?

A. I believe that is about the time we made the deeds to each other.

Q. Well, was that not all the writing that existed between

you?

A. So far as I know now that is about all.

Q. You have no interest in this matter have you, unless it turns out that in selling this seventy-six acres of land you sold or undertook to convey the entire tract when you did not have a complete title to the tract?

A. I never tried to convey anything only what I owned.

Q. If you conveyed to Flanary the entire tract and did not own all the interests when you did convey more than you owned, did you not?

A. Yes, but I was to get them other shares. I could not get the Elliot share and I was to stand good for that.

Q. You knew at the time that you traded with M. B. Rutherford that there were three interests yet outstanding did you not?

A. Yes, I knew there was.

Q. And you knew that Rosetta A. Leedy owned one of those shares, did you not?

A. I was told that she did.

Q. You did convey to M. B. Rutherford twenty-two and one-quarter acres by meets and bounds as set forth in the deed; also provided in said deed that he should have a pass way from said M. B. Rutherford's house to the main road, did you not?

A. Yes, sir. I did.

Q. At what time did the dower interest that you had bought from the widow Leedy terminate?

A. I don't recollect how long. It may have been some six or seven, or maybe eight years after we bought that before she died.

Q. When you conveyed to M. B. Rutherford the twenty-two and one-quarter acres you were in possession of the seventy-six acres, were you not?

A. Me and him together were in possession of it.

Q. Did he not at once take possession of the twenty-two and one-quarter acres, and has he not lived on it ever since?

A. Yes, sir. He took possession right then and has lived there ever since. He had lived there before I suppose and when the old widow moved off and when I bought land, he was living in her house, and when I bought ^{and} we made our trade and partitioned the land he moved back in the house he had been living in.

Q. You spoke of loaning M. B. Rutherford \$20.00 at the time you traded with him. Now, are you not mistaken about that, and is it not a fact, as asserted in the deed, that he was to pay you \$20.00 balance of the purchase money for the twenty-two and one-quarter acres in twelve months from that date?

A. No sir. It was not to be paid at all on the land. He was to pay that borrowed money back in twelve months. He never paid it for two or three years. He paid it by working in the Blacksmith shop and hoeing corn.

Q. Now that was not the \$20.00 that was mentioned in the deed was it?

A. I don't know how that \$20.00 or the \$158.00 come to be mentioned in there anyway. I don't remember anything about it.
And further this deponent saith not.

Signature waived.

J. F. Johnson another witness of lawful age, after being duly sworn, deposes and says:

Q. State your age, residence and occupation, and whether or not you are the defendant in this suit?

A. Age, forty-four years; reside on the land in controversy and am a farmer. I am also one of the defendants in this suit.

Q. From whom did you and your former wife purchase this fifty-four acre tract of land?

A. Charlie Rutherford.

Q. How long have you owned the land and been in possession of it?

A. About eight years last July since I bought it and I took possession in November.

Q. When did you first learn that M. B. Rutherford was claiming an interest in your land?

A. About last March Court or shortly after Court was over.

Q. Did he or not at any time ever tell you that he had no interest in your land and that the title was perfect except the interest of Carroll and Elliot?

A. Yes. He told me that them two other little shares was all there was against it.

Q. And what has he told you since that?

A. He told me since then when I was talking of selling to John Neil and he was kicking on the two little shares that was not bought that that was all there was against it, and would never amount to a penny. John Elliot's one-seventh of one-thirteenth and Dock Carroll's one-third of one-thirteenth.

The foregoing question and answer thereto are excepted to because no time or place is fixed when the conversation should have been had.

Jas. W. Orr.

Q. State as nearly as you can when it was that Mr. Rutherford made these statements just detailed by you as above?

A. I cannot state positively the time. When I was buying he mentioned about those two little shares.

Q. Do you know, Joe, how long Charlie Rutherford, your vendor, had been in possession of this land at the time you and your wife purchased it from him?

A. About three years I believe to the best of my recollection.

Q. Do you know who he succeeded or followed in the possession of that land, if so, who was it?

A. Mr. T. H. Flanary.

Q. State, if you know, how long Mr. Flanary had possession of that land?

A. I think about two or three years, I am not positive.

Q. Did Mr. Flanary ever live on the land himself?

A. I think not.

Q. State whether or not he had a renter or tenant on it?

A. Yes, sir. He had renters on it.

Q. Will you please procure attested copies of the deeds from J. K. P. Rutherford to T. H. Flanary; T. H. Flanary to Charlie Rutherford, and Charlie Rutherford and Mrs. Huff to you, and file them with your deposition?

A. I will and file them as a part of my deposition marked exhibits J. F. J. "1", "2", and "3".

CROSS EXAMINATION.

Q. Do you know, Mr. Johnson, when the widow, Elvira Leedy, died.

A. No, sir, I don't know.

Q. The seventy-six acre tract of land was covered entirely by her dower, was it not?

A. That is my understanding.

Q. You say M. B. Rutherford spoke to you about the two small interests of Dock Carroll and John Elliot. Is it not a fact that Mr. Rutherford told you that John Elliot and Dock Carroll were all of the heirs that had not sold their interest?

A. He said their's was all there was in it that was not bought. And further this deponent saith not.

Signature waived.

The further taking of these depositions adjourned until the 18th day of ~~January~~ 1912.

Golden Barton N.P.

Met pursuant to adjournment at the Law Office of M.C. Ely, in the town of Jonesville, Virginia, on January, 18th, 1912.

Charles M. Graham a witness of lawful age, after being duly sworn, deposes and says:

Q. State your age, residence and occupation?

A. Forty-five years old; reside four miles west of Jonesville, and am a farmer.

Q. Are you acquainted with M. B. Rutherford, the plaintiff in this suit?

A. I am.

Q. I will ask you to state if M. B. Rutherford down in your community sometime along last fall, or at any other time, had any conversation with you with reference to the seventy-six acre tract of land, the former dower of Mrs. Elvira Leedy in the lands of her said husband, Joel Leedy, deceased, and his interest therein, and the interest of other parties?

A. As to the exact date I had the conversation with Mr. Rutherford, the impression is on me that it was the 16th day of March, if not, between that time and the first of April, at my yard gate or stile block. This controversy, or words in the way of a controversy, had arose between them over this land. I asked him when he was coming down to cut a share off my land. Then we talked quite a bit and he said, let Jim Rutherford or Joe Johnson fill their contract as he had done. I cannot give it all, and I would not attempt to give it, in his language. He said they had a contract and Jim Rutherford was to buy two shares and he was to buy one share; that he bought his share and paid for it, the Addy Leedy share I believe,

and that Jim had not bought all of his, that he was to buy two shares, the Elliot and Carroll, I believe, that he had not bought to fill his contract. And then I have known of his talking away back yonder when he worked for me, about the time the trade was made. My understanding was all the time that they had made this deal. I recollect one time of hearing a little controversy between him and Mr. Jim Rutherford about some blacksmithing in their deal back there, one special day that was, and I had uncle Jimmy employed to come and help me and he didn't come and Boyd come and explained why he had come, that uncle Jimmy Rutherford could not come that day, and I did not pay him for his work, I paid Mr. Jimmy Rutherford instead of Boyd. My understanding was, and I got my understanding from Boyd, that he had borrowed money from Mr. Rutherford and he was working for Mr. Rutherford on his debt of borrowed money.

The foregoing answer in so far as the witness undertakes to state what his understanding was in regard to the contract between the parties; and also, his statement in regard to the plaintiff having borrowed some money from J. K. P. Rutherford, is excepted to as inadmissible and immaterial. The written contracts are the best evidence between the parties.

Jas. W. Orr, for plaintiff.

CROSS EXAMINATION.

Was not M. B. Rutherford's statement to you on that occasion in regard to the dealings between him and J. K. P. Rutherford, that when they traded there was some outstanding interests not yet sold by the heirs of Joel Leedy, deceased, and that he was to buy Rosetta A. Leedy's interest (she is called Addie Leedy) and Jim was to buy the other two shares, and they were not to bid against each other?

A. No, sir. I stated that he said in their contract he, Jim Rutherford, was to buy two shares and he, Boyd, was to buy one,

and that he had filed his contract and let him do the same.

Q. Did M. B. Rutherford show you his deeds on that occasion?

A. I believe he did. I think he showed me some papers, but I didn't read them. He had some papers with him.

Q. Did he not tell you on that occasion that he relied on his deeds for his interests in the land?

A. He told me that he aimed to hold to his papers and nothing else- or words similar to that.

And further this deponent saith not.

Signature waived.

Attendance as witness one day \$.50.

M. E. Harber another witness of lawful age, after being duly sworn, deposes and says:

Q. Mr. Harber, state your age, residence and occupation?

A. Fifty-two years old; reside near Hubbard Springs, Virginia, and am a carpenter.

Q. Please state if you are acquainted with M. B. Rutherford, the plaintiff in this suit, and if so, how long you have known him?

A. I am. I have known him pretty near all my life, I reckon.

Q. Did he ever have any conversation with you in reference to his ownership of any part of the Elvira Leedy dower tract of land?

A. Yes, sir.

Q. In that conversation, or at any other time, did he tell you that he and J. K. P. Rutherford had divided that tract of land, and deeded to each other their interest therein and that he, Boyd, was to buy one share and Jim was to buy two shares to make their titles perfect, or in words to that effect?

The foregoing question is excepted to because no time, nor place, is sufficiently fixed. Jas. W. Orr, for plaintiff.

A. Yes, sir. I was building a school house out there and I boarded with Mr. Rutherford, and he was telling me about his land business, and he said that him and James Rutherford owned the land all but three shares- that is the Leedy land, and he said they divided it and he was to buy one share and James Rutherford to buy two and he had bought his. While I was boarding with him in April or May of last year- that is April or May, 1911, he showed me his deeds. I don't remember much about the deeds. I looked at the deed Mr. James Rutherford had made him and then a deed that he had got from Rosetta Leedy in the west.

CROSS EXAMINATION.

Q. At the time that M. B. Rutherford showed you his deeds, and you looked at the same, did you not remark to Mr. Rutherford that anybody that could look straight up would know that the land conveyed by those deeds was his, or words to that effect?

A No, sir. I didn't read the deeds but very little. He said the deeds was what he was going by and that was what he aimed to hold by. I might have told him if there was anything wrong with the deeds I didn't know it or could not see it. I didn't know much about deeds.

And further this deponent saith not.

Signature waived.

Witness claim one day \$.50.

N. Wygal another witness of lawful age, being duly sworn, testifies as follows:

Q. Mr. Wygal, state your age, residence and occupation?

A. Sixty-eight years old; reside about four miles west of Jonesville, and am a farmer.

Q

Q. Are you acquainted with M. B. Rutherford?

A. Yes, sir. He is a neighbor to me.

Q. Are you acquainted with the tract of land, being a part of the land owned by Joel Leedy at the time of his death, and afterwards assigned to his widow, Mrs. Elvira Leedy, as her dower?

A. Yes, sir. I have been on the land frequently. Of course I would not undertake to state the bounds of it.

Q. Are you acquainted with the parcel of land out of that tract now owned by M. B. Rutherford?

Yes.
I want to ask you if Mr. M. B. Rutherford ever had any conversation with you in reference to the partitioning of that land between himself and J. K. P. Rutherford, and if you say he did, tell what he said about it?

A. He has had several talks about the division of it. I don't know whether it was done by an order of the Court or Commissioner. I don't know as to that how it was done, but he told me at different times and once or possibly oftener in the presence of Mr. James Rutherford, that they had bought the entire dower with the exceptions of three shares or possibly three parts of shares, part of them might have been parts of shares, that there were three different parcels unpurchased and that they had divided it; that they bought so many shares each, and there was three shares or parts of shares that had not been purchased, and then three they had agreed that Mr. James Rutherford would take two of them and that he would take the third on his side of the divide, and that third as I understand it, and he spoke of it different times, was owned by the widow's daughter who was in the west somewhere, I believe it was Addie Leedy, he had her share laid off to him, and Mr. James Rutherford had had the Carroll and Elliot share I believe, laid off to him.

The foregoing question and answer thereto is excepted to because intended to contradict, vary or alter the deeds between the

parties, which cannot be done.

Jas. W. Orr , for plaintiff.

Q. You say he had that conversation with you. Can you name any of the places where these conversations occurred and the time?

The foregoing question and any answer thereto is excepted to because no proper foundation was laid for this inquiry and further for the reasons stated above.

Jas. W. Orr, for plaintiff.

A. At different places. At his own house once I believe. I paid no attention to the matter. I believe I told him it was a little dangerous to divide the unpurchased interest⁴ and it was none of my business and it did not bear on my mind much. And in in his house and at different other times he spoke of it.

Q. Then, if I understand you correctly, Mr. Rutherford told you that both he and James K. P. Rutherford owned interests in this land; that there was three interests, or parts of three interests, that they did not own, but that they had divided this land between them and that to make his title clear he was to purchase one of these interests and James the other two?

The foregoing question and any answer thereto is excepted to because leading and further for the reason above stated.

Jas. W. Orr, for plaintiff.

A. Yes, that was the exact words if I remember right.

CROSS EXAMINATION.

Q. Did Mr. Rutherford on the occasions referred to show you his deeds?

A. I don't know that he did. I don't hardly believe that he did. He talked of it different ways and different times, and I don't know that he ever showed me any deeds.

Q. Did he not tell you what deeds he had, one from J. K.P. Rutherford and one from Rosetta A. Leedy, and that he claimed his interest as conveyed to him by those deeds?

A. I don't remember it in that way. He just told me what J. K. P. Rutherford had bought and what he had bought, and that they were to buy so many each.

Q. Did he in that conversation speak of having bought Rosetta A. Leedy's interest and having a deed for it.

A. I don't know that he particularly told me about that separate deed, I don't remember how that was. I am of the opinion that he told me of the different ones he bought, but I don't know which ones it was.

Re-examination in chief.

Q. Did Mr. Rutherford tell you in these conversations or any of them, the reason why they had divided the land before they made the purchase of these three outstanding shares. If so, tell what he said about them?

The foregoing question and any answer thereto excepted to for the reasons above stated.

Jas. W. Orr, for plaintiff.

A. I think he give his reason that they wanted to own the land and live neighbors there. And these other shares were unpurchased and they wanted them to fill out because they did not want anyone else in there, and I think Boyd wanted the Addie Leedy share himself, that ~~she~~ was in the family, related to his first wife, however, and that he could get her share reasonable and wanted that to fill out his little home there.

And further this deponent saith not.

Signature waived.

"itness claim one day \$.50.

Defendants close their evidence.

J. K. P. Rutherford being reintroduced by plaintiff's counsel for further cross examination, deposes and says:

Q. Is it not a fact that in your deed to T. H. Flanary dated January, 14th, 1897, you being apprised of the fact that there was some outstanding interests in the lands of Joel Leedy, deceased, that had not been purchased, you inserted in your deed this clause: " And it being admitted that the said J. K. P. Rutherford has not as yet secured deeds from some of the heirs of Joel Leedy, deceased, it is agreed that the said T. H. Flanary shall hold a sufficient amount in his hands out of the last deferred payment to compensate him in securing a title from said heirs"?

A The foregoing question and any answer thereto excepted to because the deed speaks for itself.

C. T. Duncan, of counsel for
defendants.

A. Yes, that was the shares of John Elliot and the other Elliot children, and one of the three Carroll children.

Q. Was not the Rosetta A. Leedy interest also outstanding at that time?

A. Yes, It was at that time I suppose, and was laid off in Boyd's share.

The foregoing answer as to the Rosetta A. Leedy interest being laid off in Boyd's share is excepted to because not responsive to the question and because intended to vary or alter the deeds between the parties.

Jas. W. Orr.

Q. Who, if anybody, purchased Emma Elliot's and Etta Elliot's shares?

A. I think Joe Johnson bought Emma's and I bought Etta's.

Q. Then, that left the interest of James Carroll (known as Dock Carroll) one of the heirs of Mandana Carroll, deceased, and

John Elliot's interest, one of the heirs of Selina Elliot, deceased, did it not?

A. Yes, those two interests or shares are outstanding yet as far as I know.

Q. Was not the dower interest of Elvira Leedy, widow of Joel Leedy, deceased, conveyed to you by deed dated November, 10th, 1890?

A. Yes, I reckon it was. I don't remember the exact date. It was for \$275.00 as stated in the deed.

And further this deponent saith not.

Signature waived.

Virginia/

Lee County, to-wit:

I, Golden Barton, a Notary Public in and for Lee County, Virginia, do hereby certify that the depositions of J. K. P. Rutherford, J. F. Johnson, Charles M. Graham, M. E. Harber, and N. Wygal, were taken and sworn to before me in said County at the times and place, and for the purpose in the caption mentioned.

Given under my hand this the 18th day of January, 1912.

Golden Barton N.P.

J. H. Johnson et al
vs. Debas
M. B. Rutherford.

Filed Jan. 27, 1912
J. D. Edds, clerk

Notary fee \$7.00

Virginia, Lee County, to-wit:

To the Sheriff or any Constable of said County.

We command you to summon C. M. Graham, N. Wygal and M. E. Harber, to appear at M. G. Ely's Law Office in the town of Jonesville, on the 18th day of January, 1912, to testify in behalf of the defendants in a certain Chancery suit pending in the Circuit Court of Lee County, Virginia, wherein M. B. Rutherford is plaintiff and J. F. Johnson and others are defendants. And this you will in no wise omit under penalty of \$20.00.

Given under my hand this the 11th day January, 1912.

Golden Barton M.P.

M. B. Mather
201 { Summa
{ Winters

J. H. Johnson et al

To Jan. 18 - 1912

Executive

Shelby Co. \$1.50

N. W. Myers

This deed made this 16th day of March 1891 by and between J. K. P. Rutherford & Catherine Rutherford, his wife, of the one part, and M. B. Rutherford, of the second part, all of the county of Lee and State of Virginia.

Witnesseth, That said party of the first part, for and in consideration of the sum of one hundred and fifty-eight dollars, one hundred & thirty-eight dollars in hand paid, the receipt of which is hereby acknowledged & twenty dollars to be paid within twelve months, from date, doth by these presents give, grant, bargain, sell and convey unto the said M. B. Rutherford that or said J. K. P. Rutherford's interest in the dower of Elmira, Widow of Joel Leedy dec'd. lying & being in Lee County, Virginia about 3 miles west of Jonesville, and bounded as follows:- Beginning on a Rock, thence N 24 W 58 poles to a maple & 2 sourwoods, thence about N 24 W. 10 poles to a stake by a sink, thence N. 86 1/2 W. 87 1/2 poles to two white oaks by a path, thence S 34 1/2 E 37 poles to a white oak thence S 64 ^{1/2} E 64 1/2 poles to a rock, thence S 6 E 18 poles to a rock, thence S 64 E 5 poles to a rock, thence N 1 1/4 W. 4 poles to a spring; thence N. 76 3/4 E ^{29 1/4} ~~29 1/4~~ poles to the Beginning, containing twenty-two acres & one quarter, more or less

To have and to hold unto the said M. B. Rutherford and heirs forever together with the appurtenances thereunto belonging, including pass way from said M. B. Rutherford's house to the main road; and the said J. K. P. Rutherford & wife hereby covenant that they will warrant generally the parcel of land or interest hereby conveyed. Witness, the following signatures and seals.

J.K.P. Rutherford, (Seal)
her
Catherine x Rutherford (Seal)
mark

Virginia, Lee County, to-wit:-

I, John B. West, a Notary Public for said county and state, do hereby certify, that J. K. P. Rutherford and Catherine Rutherford, his wife, whose names are signed to the foregoing deed, bearing date March 16th 1891, have acknowledged the same before me in my said county. Given under my hand this 16th day of March, 1891.

John B. West N. P.

Virginia, Lee County, to-wit:

In the office of the Clerk's ~~office~~ of the county court for said county the 4th day of January 1902. This deed was presented, and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan Clerk.

A copy,

Teste: H. C. J. Ewing, Clerk.

D.B. 38, page 192.

FIDELITY BOND

RECORDED

M. B. Rutherford
from J. D. D.
J. K. P. Rutherford

A.

Copy 45¢

* Leedy as an heir at law of the said Joel Leedy Deceased. To have and to hold the said undivided right title and interest unto the said M. B. Rutherford and his heirs forever.

Witness the following signatures and seals.

Rosetta A. Leedy Seal

State of Iowa ss
County of Page.

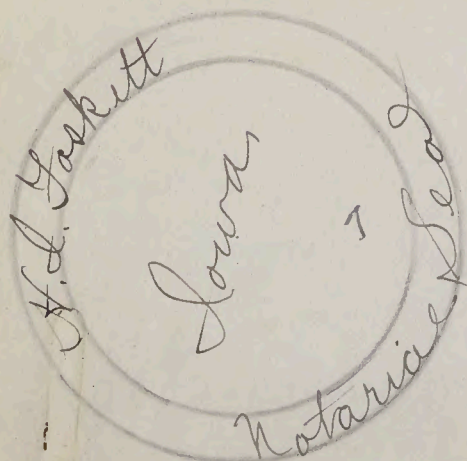
On this 12th day of July 1900, before the undersigned a Notary Public in and for said county and state personally appeared Rosetta A. Leedy, to me personally known to be the identical person who signed the foregoing instru- as grantor and acknowledged the execution of the same to be her voluntary act and deed for the purposes therein expressed.

Witness my hand and seal the day and date last above written.

H. I. Faskett

Notary Public

Ny com. Expires July 4th 1903.



Virginia, Lee County, to, wit:

In the Office of the Clerk of the county court for said county the 4th day of January 1902. This deed was presented, and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan Clerk.

A copy,

Teste H. C. J. Ewing, Clerk.

D.B.38, page 193 etc.

FIDELITY BOND

RE U.S. PAT. OFF.

M. B. Rutherford
from J. Seely
Rosetta A. Leedy

B

Copy 45th

This deed made this the 14th day of January 1897 by and between James K. P. Rutherford and Isabella Rutherford his wife, of the first part, and T.H. Flanary of the second part both parties of the county of Lee and State of Virginia:

Witnesseth; that for and in consideration of the sum of eight hundred dollars in hand paid and secured to be paid as follows, Four hundred dollars cash in hand, the receipt of which is hereby acknowledged, One hundred dollars, evidenced by the note of the said T. H. Flanary due and payable in twenty days from this date, One hundred and fifty dollars evidenced by the note of the said T. H. Flanary due and payable in one year from this date, and the remainder one hundred and fifty dollars evidenced by the note of the said T. H. Flanary due and payable two years from this date, the said James K. P. Rutherford and Isabella his wife of the first part doth bargain, grant, sell and convey unto the said T. H. Flanary- the following described tracts or parcels of land, situated in Lee County Va. about three miles west of Jonesville, the first tract bounded as follows to-wit: Beginning at a stake on the Leedy line corner to the lower and running thence S. 9 N. 55 poles to a stake, thence N. 65 E. 24 poles to a cedar and small walnut on the north side of the main road, and with it leaving the lower N. 77 E. 33 poles to a stake on the old line and with it S. 16 E. 28 poles to corner of Joel Leedy's land and with lines thereof S. 87 W. 70 poles to a walnut, thence N. 69 W. 31 poles to two poplars on the north side of the road, thence N. 57 W. 40 poles to a stake, thence N. 57 1/2 E. 57 poles to the beginning, containing 23 acres more or less- It being the same tract of land purchased by James K. P. Rutherford and wife from C. E. Flanary and wife, as is shown by deed now of record in the County Court Clerk's office of Lee County, Deed Book No. 30, Page 126- The second tract bounded as follows to-wit: Beginning on a walnut and cedar on the main road N. 17 W. 94 3/3 poles to a chestnut, thence N. 24 W. 8 poles to a rock, thence S. 70 3/4 W. 29 1/4 poles to the spring, thence S

1 3/4 E. 4 poles to a rock, thence N. 64 W. 5 poles to a rock, thence N. 6 W. 14 poles to a rock, thence N. 64 1/2 W. 64 1/2 poles to a rock, thence S. 23 E. 30 poles to a dogwood, thence S 30 1/2 W. 29 poles to a rock, thence S. 35 1/2 E. 70 poles to a rock, thence N. 68 1/2 E. 60 poles to a rock, thence S. 7 1/2 E. 55 poles to a rock, thence N. 66 E. 24 poles to the Beginning containing 31 acres of the lower tract of Elvira Leedy widow of Joel Leedy Dec. this deed conveys the said lower interest and the fee simple interest in the same also- as is shown by deeds executed to said J. K. P. Rutherford by Boyd Rutherford, and the heirs of Joel Leedy Dec. all of which deeds are of record in the County Court Clerk's Office of Lee County to which reference is hereby made for a more particular description, and the parties of the first part sells and conveys to the party of the second part another tract of land situated on the chestnut ridge, containing about 4 1/2 acres more or less, being a piece of woodland, bounded by the lands of James McGonley, Tucker Mise and Boyd Rutherford. to have and to hold with all the appurtenances thereto belonging, and the parties of the first part covenant with the party of the second part that they warrant generally the title to lands hereby conveyed. And it being admitted that said J. K. P. Rutherford has not as yet secured deeds from some of the heirs of Joel Leedy Dec. It is agreed that the said T. H. Flanary shall hold a sufficient amount in his hands out of the last deferred payment to compensate him in securing the title from said heirs- and it is further understood that the vendors equitable lien is hereby retained until the purchase money is paid in full.

Witness the following signatures and seals this the date above written.

his
James K. P. x Rutherford (seal)
mark
her
Isabelle x Rutherford (seal)
mark.

Virginia, Lee County to-wit:

I, M. G. Ely, a Notary Public in and for the County and State aforesaid do hereby certify that James W. F. Rutherford and Isabella Rutherford his wife whose names are signed to the foregoing deed bearing date Jan. 14th, 1897 have acknowledged the same before me in my County and State aforesaid.

Given under my hand this the 14th day of Jan. 1897.

M. G. Ely, N.P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court of said County, the 15th day of January 1897, this deed was presented and, together with the certificate thereto annexed, admitted to record.

Teste: S.V.T. Richmond, Clerk.

Examined copy.

J. K. P. Buttrick &
To } Dear -
J. H. Flannery

J. H. J.

" / "

with
John
Sed -

This deed made this the 30th day of October 1899, by and between T. H. Flanary and Mary L. Flanary his wife of Lee County Virginia of the one part, and Susan Huff and Charles Rutherford of Harlan County Kentucky of the other part.

Witnesseth, that for and in consideration of the sum of eight hundred dollars, four hundred dollars part thereof in hand paid, and the remaining four hundred dollars to be paid in twelve months time, with interest from date, and for which sum a note is this day executed by said parties of the second part to the said T.H. Flanary, the receipt of which is hereby acknowledged. The said T. H. Flanary and Mary L. Flanary his wife do hereby grant and convey unto the said Susan Huff and Charles Rutherford, in the proportion of five eights to the said Susan Huff and three eights to the said Charles Rutherford, certain tracts or parcels of land lying and being in said Couty of Lee, and bounded as follows, to-wit. The first tract beginning at a stake on the Leedy line, corner to the dower, and running thence S. 9 E. 55 poles to a stake, thence N. 65 E 24 poles to a cedar and small walnut on the north side of the main road and with it leaving the dower N. 77 E 33 poles to a stake on the old line and with it S. 16 E 28 poles to a corner of Joel Leedy's land and with a line thereof S. 87 W 70 poles to a walnut, thence N. 69 W. 31 poles to two poplars on the north side of the road thence N. 37 W. 40 poles to a stake, thence N. 67 1/2 E 57 poles to the beginning. Containing 22 acres more or less. The second tract is bounded as follows, towit. Beginning on a walhut and cedar on the main road N. 17 W 94 3/4 poles to a chestnut, thence N. 24 W 8 poles to a rock, thence S. 76 3/4 W. 29 1/4 poles to the spring, thence S. 1 3/4 E 4 poles to a rock, thence N. 6 W 14 poles to a rock, thence N. 64 1/2 W 64 1/2 poles to a rock, thence S 23 E 30 poles to a dogwood, thence S 30 1/2 W 29 poles to a rock, thence S 35 1/2 E 70 poles to a rock, thence E 68 1/2 E 60 poles to a rock, thence S 7 1/2 E 55 poles to a rock, thence

N 66 E 24 poles to the beginning. Containing 57 acres of the dower tract of Elvira Leedy widow of Joel Leedy deceased, and the said dower interest as well as the fee simple interest in this tract is hereby conveyed. The third tract is bounded as follows, to-wit by the lands of James McConley, Tucker Wise and Boyd Rutherford, being a piece of woodland and containing about 4 1/2 acres more or less, and is situated on chestnut ridge, but does not adjoin the above mentioned two tracts.

These lands are situated about 3 miles west of Jonesville, Va. and are the same lands conveyed to the said T. H. Flanary by J.K. P. Rutherford and wife by deed dated January 14th 1897. And the said T. H. Flanary and Mary L. Flanary his wife covenant with the said Susan Huff and Charles Rutherford that they will warrant generally the said three tracts of land hereby conveyed, except as to the interests of James Carroll, John Elliott, Emma Elliott and Etta Elliott in the second tract, which interests are not conveyed. To have and to hold the said three tracts of land, with the exception aforesaid, together with the appurtenances thereunto belonging unto the said Susan Huff and Charles Rutherford, and their heirs forever. And a lien is hereby retained on said land for the unpaid purchase money.

Witness the following signatures and seals.

T. H. Flanary (Seal)

Mary Flanary (Seal)

Virginia, Lee County, to-wit.

I, James W. Orr, a Commissioner in Chancery for the Circuit Court of said County, do certify that T. H. Flanary, whose name is signed to the foregoing deed bearing this date, this day personally appeared before me in my said County and acknowledged the said deed to be his act and deed for the purposes therein mentioned. Given under my hand this the 30th day of October 1899.

James W. Orr, Commissioner in
Chancery.

Virginia.

Lee County towit

I, Joseph B. Burkes a Justice of the Peace in and for the County and State aforesaid do hereby certify that Mary Flanary whose name is signed to the foregoing deed bearing date the 30th day of October 1899 have acknowledged the same before me in my County aforesaid.

Given under my hand 31st day of October 1899.

Joseph B. Burkes J P

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County, the 28th day of March 1900, the foregoing deed was presented and, together with the certificates thereto annexed, admitted to record.

Teste: B. M. Morgan Clerk.

Examined Copy.

J. H. Fleming
to the Seed -
Huff and Protheroe
J. H. J.

"2"

with
Johnson -

This deed of conveyance made and entered in July 7 1903 by & between Charles Rutherford & Sarah Rutherford of Lee Co. Va. parties of the first part & J. F. Johnson & Elizzie Johnson his wife parties of the second part

Witnesseth that for & in consideration of eight hundred & fifty dollars in hand paid the receipt of which is hereby acknowledged the party of the first part hereby sell & convey to the parties of the second part the following described 3 tracts of land situated in Lee County Va. about three miles west of Jonesville on the north side of the main road & bounded as follows.

First tract beginning at a stake on the Leedy line corner to the dower thence S 9 E 55 poles to a stake at main road thence with same westwardly to a poplar N 37 W 40 poles to a stake N 67 1/2 E 57 poles to the beginning containing 16 acres more or less.

Second tract Beginning at a walnut & cedar on the main road N 17 W 94 3/4 poles to a chestnut N 24 W 8 poles to a rock S 76 3/4 W 29 1/4 ps. to the spring S 1 3/4 E 4 ps. to a rock N 64 W 5 ps to a rock N 6 W 14 ps to a rock N 64 1/2 W 64 1/2 ps to a rock S 23 E 30 ps to a dogwood S 30 1/2 W 29 ps to a rock S 35 E 70 ps to a rock N 68 1/2 E 60 ps to a rock S 7 1/2 E 55 ps to a rock N 66 E 24 ps to the beginning. Containing 57 acres of the dower tract of Elvira Leedy widow of Joel Leedy Deed. the said dower interest as well as the fee simple interest in this tract is hereby conveyed.

Third tract is bounded by the land of James McConley Tucker Mise & Boyd Rutherford being a piece of woodland containing about 4 1/2 acre situated on chestnut ridge not adjoining but lies near to the above named two tracts being the same lands conveyed to the said Chas Rutherford & Susan Huff by deed of date Oct 30 1899. To have and to hold said 3 tracts of land with appurtenances warranted free from encumbrance except as to the interests of James Carroll John Elliott & Emma Elliott in the second tract to the parties of the second part their heirs & assigns forever with covenants of general warranty save above ex-

ception. In testimony whereof the parties of the first part hereunto subscribe their names and affix their seals the day & year above written.

Charles Rutherford (Seal)

Sarah Rutherford (Seal)

Virginia, Lee County to-wit:

I, B. M. Morgan, Clerk of the County Court for the County aforesaid in the State of Virginia, do certify that Chas. Rutherford and Sarah Rutherford, whose names are signed to the foregoing writing bearing date on the 7th day of July, 1903, have acknowledged the same before me in my County aforesaid.

Given under my hand this the 14th day of July, 1903.

B. M. Morgan Clerk.

Virginia, Lee County to-wit:

In the Office of the Clerk of the County Court for said County, the 18th day of December 1903. This deed was presented, and together with the certificate of acknowledgment thereto annexed, admitted to record.

Teste: B. M. Morgan Clerk.

Examined Copy.

Proche fuel to
Johnson

J. F. J.
no "3" 4

This deed, Made this the 16th day of January 1897, by and between Allie D. Elliott, Mattie M. Elliott, Lizzie Quinley, nee Elliott, and Robert A. Quinley her husband, Sarrah E. Elliott, John M. Elliott, of the one part, and James K. P. Rutherford, of the other part,

Witnesseth, That for and in consideration of the sum of twenty-five dollars, in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant and convey with covenants of general warranty unto the said James K. P. Rutherford all their undivided right, title and interest in and to the dower interest of Elvira Leedy, widow of Joel Leedy, deceased, in and to the real estate of the said Joel Leedy, deceased, lying and being in Lee County, Virginia, on the Main Road about three miles West of Jonesville, Va., and which dower was laid off and assigned to the said Elvira Leedy by the Commissioners who partitioned the lands of the said Joel Leedy, deceased, and to which report of partition of record in the Clerk's Office of the County Court of said county, reference is here made for a more particular description thereof.

To have and to hold the said undivided interests hereby conveyed unto the the said James K. P. Rutherford and his heirs forever. Witness the following signatures and seals.

Allie D Elliott (Seal)
Mattie Elliott (Seal)
Lizzie Quinley (Seal)
Robert Quinley (Seal)
Sarah Effie Elliott (Seal)
John Quinley (Seal)
Etta Quinley (Seal)
Emma Woodward (Seal)
Henry Woodward (Seal)

Virginia, Lee County to-wit:

I, M. G. Ely a Notary Public in and for the County and State aforesaid do certify that Allie D. Elliot, Mattie Elliott, Lizzie Quinley and Robert Quinley whose names are signed to the foregoing deed bearing date Jan. 16th 1897 have acknowledged the same before me in my county and State aforesaid.

Given under my hand this Jan. 18th, 1897.

M. G. Ely N.P.

The State of Texas
County of Eastland.

I, J. E. Luse a notary public in and for Eastland county in the State of Texas do certify that Sarah Effie Elliott whose name is signed to the foregoing deed bearing date the 16th day of January A.D. 1897 acknowledged the same to before me in my County and State aforesaid.

Given under my hand and seal of office this 6th day of February A. D. 1897.

#271

J. E. Luse
Notary Public for Eastland Texas

Fee 50 cts.

Virginia, Lee County to-wit:

I, B. M. Morgan Clerk of the County Court for the County aforesaid in the State of Virginia, do certify that John Quinley and Etta Quinley his wife whose names are signed to the foregoing deed bearing date on the 16th day of January 1897, have each acknowledged the same before me in my county aforesaid.

Given under my hand this the 27th day of February 1902.

B. M. Morgan Clerk.

Virginia Lee County to wit

I, F. A. Maness a Justice for the County aforesaid do certify that Emma Woodward and Henry Woodward whose names are signed to the within writing bearing date 16th Jan. 1897 have acknowledged the same before me in my County this Aug the 28 day 1905.

F. A. Maness J P

Virginia Lee County, to-wit:

In the Clerk's Office of Lee County, on this the 23rd day of March, 1911, this deed was presented, and together with the certificate annexed, admitted to record.

Teste: H. O. T. Ewing, Clerk.

*Elliott to
Prutty Fred -*

This deed made this the 14th day of January, 1897, by and between Marion Carroll, Henderson Carroll and Sarah Carroll his wife, and James Carroll, of the first part and James K. P. Rutherford of the second part all of Lee County, Va.

Witnesseth, that for and in consideration of the sum of fifteen dollars cash in hand paid, the receipt of which is hereby acknowledged the parties of the first part doth hereby bargain grant sell and convey unto the party of the second part their undivided interest in and to the dower interest of Elvira Leedy, widow of Joel Leedy Dec. which descend to them from their mother Mandana Carroll, nee Leedy- to have and to hold with all its appurtenances thereto belonging and the parties of the first part covenant with the party of the second part that they will warrant generally the title to the land hereby conveyed.

Witness the following signatures and seals, this the date above written.

Marion Carroll (Seal)
his
Henderson x Carroll (Seal)
mark
Sarah x Carroll (Seal)
her
mark

Virginia, Lee County to-wit:-

I, M. G. Ely, a Notary Public in and for the County and State aforesaid do certify that Marion Carroll, Henderson Carroll and Sarah Carroll his wife whose names are signed to the foregoing deed bearing date Jan. 14th 1897 have acknowledged the same before me in my County and State aforesaid.

Witness my hand this Jan. 14th, 1897.

M. G. Ely N.P.

Virginia, Lee County, towit:

In the Clerk's Office of Lee County, on this the 23d day of March, 1911, this deed was presented, and together with the certificate annexed, admitted to record.

Teste: H. C. T. Ewing, Clerk.

Examined copy.

Cause to Puller *see*

This deed of conveyance made & entered into July 7 1903 by & between Susan Lewis (late Susan Huff & J J Lewis of Letcher County Ky. parties of the first part & Charles Rutherford & Sarah Rutherford of Lee County Va. parties of the second part

Witnesseth that for & in consideration of one dollar in hand paid the the receipt of which is hereby acknowledged the parties of the first part hereby sell & convey to the party of the second part all their interest in and to the following described tracts of land situated in Lee County Va. about 3 miles west of Jonesville & bounded as follows First tract Beginning at a stake on the Leedy line corner to the dower thence S 9 E 55 ps to a stake at main road & with same westwardly to a poplar thence N 37 W 30 ps to a stake N 67 1/2 E 57 ps to the beginning containing 16 acres more or less. Second tract beginning at a walnut & cedar on the main road N 17 W 94 3/4ps to a chestnut thence N 24 W 8 to a rock S 76 3/4 W 29 1/4 ps to the spring S 1 3/4 E 4 ps to a rock N 64 W 64 1/2 ps to a rock S 33 E 30 ps to a dogwood S 30 1/2 W 29 ps to a rock S 35 1/2 E 70 ps to a rock N 68 1/2 E 60 ps to a rock S 7 1/2 E 55 ps to a rock N 66 E 24 ps to the beginning containing 57 acres of the dower tract of Elvira Leedy widow of Joel Leedy Decd. Third tract is bounded by the lands of McConley Tucker Wise & Boyd Rutherford being a piece of woodland containing about 4 1/2 acres & is situated on chestnut ridge but does not adjoin the above mentioned two tracts. Same lands conveyed to Susan Huff & Charley Rutherford by T. H. Flanary & wife by deed of date Oct 30 1899.

To have and to hold the same with its appurtenances to the party of the second part their heirs & assigns forever with covenants of special warranty. In testimony whereof the parties of the first part hereunto subscribe their names affix their seal the day & year above written.

her
Susan X Lewis (Seal)
mark
J J Lewis (Seal)

State of Ky

County of Letcher

I John W Collins clerk of the County aforesaid certify that the foregoing deed from Susan & J J Lewis to Charley & Susan Rutheford was produced to me in Letcher County Ky & acknowledged by said Susan Lewis & J J Lewis to be their act & deed

Given under my hand July 7 1903.

John W Collins Clerk.

by H. K. Raleigh D C

Virginia, Lee County to-wit:

In the office of the County Court for said County, the 24th day of July 1903. This deed was presented, and together with the certificate of acknowledgment thereto annexed, admitted to record.

Teste: B. M. Morgan Clerk.

Examined Copy.

Haff to
Pulthre

J. F. Johnson, et al.....Defendants.
))
 Ads.) IN CHANCERY.
))
M. B. Rutherford.....Plaintiff.

Brief of attorneys for the defendants.

This is a suit brought by M. B. Rutherford to have what we contend to be a second partition made of a tract of land situated in Lee County, Va. containing 76 acres, and known as the dower tract of land owned by Elvira Leedy, widow of Joel Leedy both now deceased. It is admitted by both parties that Elvira Leedy, widow, owned this tract of land for life, and sold it to J. K. P. Rutherford; that Joel Leedy had thirteen children and heirs at law who were entitled to the reversionary interest of said dower tract of land. The evidence from the title papers prove that on the 19th day of March 1891 when this dower interest was partitioned between J. K. P. Rutherford and M. B. Rutherford according to the contention of the defendant, that J. K. P. Rutherford had a deed to the dower- 76 acres, but that he and M. B. Rutherford had bought it jointly; that M. B. Rutherford had bought eight shares of the thirteen reversionary interests, and conveyed to J. K. P. Rutherford five of those shares, J. K. P. Rutherford owned two other shares, making at that time, including the five bought from M. B. Rutherford, seven shares. M. B. Rutherford owned three reversionary interests and J. K. P. Rutherford owned then seven reversionary interests. They agreed to partition the dower tract in that proportion and had C. C. Elliott, a surveyor, to survey the whole tract and lay off to M. B. Rutherford 22 1/4 acres. The deed being in J. K. P. Rutherford, it was only necessary that he make to M. B. Rutherford a deed to his interest in that part of the dower, which he deeded by metes and bounds according to Elliott's survey, and states positively in that deed

(See deed of J. K. P. Rutherford to M. B. Rutherford) that he conveys his interest in that dower piece and warrants generally the title to his interest in it and, as he says in his deposition, he conveys nothing in fee simple, because he never sold to M. B. Rutherford one foot of land in fee simple, but for the purpose of carrying out their agreement of partition he executed this deed to M. B. Rutherford for the 22 1/4 acres. his interest in that much of the dower tract, M. B. Rutherford already being the owner of three-thirteenths by purchase and at that time it being further known and agreed that the two together had only bought ten shares, and that there were three shares still outstanding, and to further consummate and to make their partition equal they agreed that when M. B. Rutherford purchased one other interest that it should be in his 22 1/4 and make his title perfect and complete; and that when J. K. P. Rutherford bought the other two interests, they should be in his 53 3/4 acres which he retained in the dower tract, and make his title perfect and complete. And in pursuance to that agreement, and virtually admitted by M. B. Rutherford in his deposition, M. B. Rutherford purchased the interest of Rosetta A. Leedy which is in his own tract of land, and J. K. P. Rutherford purchased all of the seven ~~interests~~ interests of the Elliott heirs except one, and all the interests ^{of} the Carroll heirs except one, those two interests to be in his part of the dower tract of land to complete the equalization of the original partition, each party, at that time, going into the absolute, open, notorious and adverse possession of their interests and holding no claim against each other ever since that day. At the time C. C. Elliott surveyed the 22 1/4 acres of the dower tract conveyed to M. B. Rutherford the residue of the tract was surveyed and J. K. P. Rutherford sold it, with covenants of general warranty, to T. H. Flanary, except as to

the interests he had not purchased of the Elliott and Carroll interests. See deed executed by J. K. F. Rutherford and wife to T. H. Flanary; T. H. Flanary sold and conveyed, with covenants of general warranty likewise to Charles Rutherford and Susan Huff. See deed filed with J. F. Johnson's deposition. Said Huff conveyed to Charles Rutherford her interest in said land, Charles Rutherford to J. F. Johnson, the defendant in this suit, and his wife, Lizzie Johnson. From an inspection of said deed your Honor will see that the lands in the possession of the defendant have been held by him and his vendor for more than ten years with open notorious, adverse, peaceable possession without any claim being set up by M. B. Rutherford or his vendor Rosetta A. Leedy, M. B. Rutherford knowing all the time that he had no interest in your defendants land by reason of his purchase. See J. F. Johnson's deposition, where he admitted that there was no defect in your defendant's title except the Elliott and Carroll interests; that that was all there was against it, knowing that when he bought the Rosetta A. Leedy interest it was to be in his own 22 1/4 which had been deeded to him. See the depositions of J. K. F. Rutherford, C. M. Graham, N. Wygal and M. E. Harber, proving clearly and unmistakeably the partition of the dower tract of land, and the agreement between the original parties as to the purchase of these other interests.

We can see no standing for the plaintiff in a Court of Equity on a case like this, where it is shown by a preponderance of the testimony that the complainant is seeking to recover something that he knows he is not entitled to, and we contend that all parol evidence is admissible in a case like this to prove a contract of partition where the subsequent conduct of the parties prove that they carried it out, and undertook to carry it out, and have acquiesced in it for more than twenty years, then from some kind of a delusion M. B. Rutherford conceives the idea that he

could win some more land by bringing suit on his Rosetta Leedy interest, losing sight of the fact that should he be entitled to one-thirteenth additional out of Joseph Johnson's 53 3/4 acres that Joseph Johnson is entitled to tw-thirteenths out of said 22 1/4 acres.

We think that we have made this case so clear to the mind of the Court that it is not necessary to argue it further; that the plaintiff's bill should be dismissed at his costs; that he has no right nor no interest in our land and cannot maintain this suit for the purposing of having his right of way, or pass way, assigned, nor for any other purpose. The plaintiff is bared from setting up his claim by the statute of limitation and by laches, and the further ground that the only interest which he owns is in his own imagination.

The complainant claims that J. K. F. Rutherford conveyed in fee simple the 22 1/4 acres to the said M. B. Rutherford, which is not true. See deed, which states that it is only his interest in part of the dower. The complainant wants to rest his whole case on the deed and dodges the real intention of the parties. See his deposition for evasive answers. He admitted in answer to one question that he purchased Rosetta A. Leedy's interest pursuant to the agreement that he was to buy one share and J. K. F. Rutherford two shares. But seeing the hazard he was putting himself in he finally denied that agreement.

J. K. F. Rutherford never did own ten-thirteenths of the reversion, he only owned seven-thirteenths and M. B. Rutherford three-thirteenths. No one disputes the fact that of the three-thirteenths, not purchased at the time of the partition, the parties had a right to sell to whom they pleased, but that did not effect the agreement between J. K. F. Rutherford and M. B. Rutherford that one of the unpurchased interests should be in the 22 1/4 acres and two of the unpurchased interests should be in

J. K. F. Rutherford's 53 3/4 acres.

Respectfully submitted.

J. L. Johnson et al
vs. Depts. Brie
M. G. Ely
M. B. Kutherford.

J. H. Johnson, et al. Defendants.
vs. M. B. Rutherford, Plaintiff.
IN CHANCERY.

Brief of attorneys for the defendants.

This is a bill brought by M. B. Rutherford to have what we contend to be a second partition made of a tract of land situated in Lee County, Va., containing 76 acres, and known as the lower tract of land owned by Elvira Leedy, widow of Joel Leedy both now deceased. It is admitted by both parties that Elvira Leedy, widow, owned this tract of land for life, and sold it to J. H. P. Rutherford; that Joel Leedy had thirteen children and his will provided for the reversionary interest of said lower tract of land. The evidence from the title papers prove that on the 10th day of March 1881 when this lower interest was partitioned between J. H. P. Rutherford and M. B. Rutherford according to the contention of the defendant, that J. H. P. Rutherford had a deed to the lower 76 acres, but that he and M. B. Rutherford had bought it jointly; that M. B. Rutherford had bought eight shares of the thirteen reversionary interests, and conveyed to J. H. P. Rutherford five of those shares, J. H. P. Rutherford owned two other shares, making at that time, including the five bought from M. B. Rutherford, seven shares. M. B. Rutherford owned three reversionary interests and J. H. P. Rutherford owned then seven reversionary interests. They agreed to partition the lower tract in that proportion and had C. C. Elliott, a surveyor, to survey the whole tract and lay off to M. B. Rutherford 23 1/4 acres. The deed being in J. H. P. Rutherford, it was only necessary that he make to M. B. Rutherford a deed to his interest in that part of the lower, which he did by metes and bounds according to Elliott's survey, and states positively in that deed

(See deed of J. K. P. Rutherford to M. B. Rutherford) that he conveys his interest in that dower piece and warrants generally the title to his interest in it and, as he says in his deposition, he conveys nothing in fee simple, because he never sold to M. B. Rutherford one foot of land in fee simple but for the purpose of carrying out their agreement of partition he executed this deed to M. B. Rutherford for the 22 1/4 acres, his interest in that part of the dower tract, M. B. Rutherford already being the owner of that part of the tract by purchase and at that time it being further known and agreed that the two together had only bought ten shares, and that there were three shares still outstanding, and to further consummate and to make their partition equal they agreed that when M. B. Rutherford purchased one other interest that it should be in his 22 1/4 and make his title perfect and complete; and that when J. K. P. Rutherford bought the other two interests, they should be in his 53 3/4 acres which he retained in the dower tract, and make his title perfect and complete. And in pursuance to that agreement, and virtually admitted by M. B. Rutherford in his deposition, M. B. Rutherford purchased the interest of Rosetta A. Leedy which is in his own tract of land, and J. K. P. Rutherford purchased all of the seven interests of the Elliott heirs except one, and all the interests of the Carroll heirs except one, those two interests to be in his part of the dower tract of land to complete the equalization of the original partition, each party, at that time, going into the absolute, open, notorious and adverse possession of their interests and holding no claim against each other ever since that day. At the time C. C. Elliott surveyed the 22 1/4 acres of the dower tract conveyed to M. B. Rutherford the residue of the tract was surveyed and J. K. P. Rutherford sold it, with covenants of general warranty, to T. H. Flanary, except as to

the interests he had not purchased of the Elliott and Carroll interests. See deed executed by J. K. P. Rutherford and wife to T. H. Flanary; T. H. Flanary sold and conveyed, with covenants of general warranty likewise to Charles Rutherford and Susan Huff. See deed filed with J. F. Johnson's deposition. Said Huff conveyed to Charles Rutherford her interest in said land, Charles Rutherford to J. F. Johnson, the defendant in this suit, and his wife, Lizzie Johnson. From an inspection of said deed your Honor will see that the lands in the possession of the defendant have been held by him and his vendor for more than ten years with open notorious, adverse, peaceable possession without any claim being set up by M. B. Rutherford or his vendor Rosetta A. Leedy, M. B. Rutherford knowing all the time that he had no interest in your defendant's land by reason of his purchase. See J. F. Johnson's deposition, where he admitted that there was no defect in your defendant's title except the Elliott and Carroll interests; that that was all there was against it, knowing that when he bought the Rosetta A. Leedy interest it was to be in his own 22 1/4 which had been deeded to him. See the depositions of J. K. P. Rutherford, C. M. Graham, N. Wygal and M. E. Harber, proving clearly and unmistakeably the partition of the dower tract of land, and the agreement between the original parties as to the purchase of these other interests.

We can see no standing for the plaintiff in a Court of Equity on a case like this, where it is shown by a preponderance of the testimony that the complainant is seeking to recover something that he knows he is not entitled to, and we contend that all parol evidence is admissible in a case like this to prove a contract of partition where the subsequent conduct of the parties prove that they carried it out, and undertook to carry it out, and have acquiesced in it for more than twenty years, then from some kind of a delusion M. B. Rutherford conceives the idea that he

could win some more land by bringing suit on his Rosetta Leedy interest, losing sight of the fact that should he be entitled to one-thirteenth additional out of Joseph Johnson's $53 \frac{3}{4}$ acres that Joseph Johnson is entitled to tw-thirteenths out of said $22 \frac{1}{4}$ acres.

We think that we have made this case so clear to the mind of the Court that it is not necessary to argue it further; that the plaintiff's bill should be dismissed at his costs; that he had no right nor no interest in our land and cannot maintain this suit for the purposing of having his right of way, or pass way, assigned, nor for any other purpose. The plaintiff is bared from setting up his claim by the statute of limitation and by laches, and the further ground that the only interest which he owns is in his own imagination.

The complainant claims that J. K. P. Rutherford conveyed in fee simple the $22 \frac{1}{4}$ acres to the said M. B. Rutherford, which is not true. See deed, which states that it is only his interest in part of the dower. The complainant wants to rest his whole case on the deed and dodges the real intention of the parties. See his deposition for evasive answers. He admitted in answer to one question that he purchased Rosetta A. Leedy's interest pursuant to the agreement that he was to buy one share and J. K. P. Rutherford two shares. But seeing the hole he was putting himself in he finally denied that agreement.

J. K. P. Rutherford never did own ten-thirteenths of the reversion, he only owned seven-thirteenths and M. B. Rutherford three-thirteenths. No one disputes the fact that of the three-thirteenths, not purchased at the time of the partition, the parties had a right to sell to whom they pleased, but that did not effect the agreement between J. K. P. Rutherford and M. B. Rutherford that one of the unpurchased interests should be in the $22 \frac{1}{4}$ acres and two of the unpurchased interests should be in

J. K. P. Rutherford's 53 3/4 acres.

Respectfully submitted.

Duncan Ed Credlin &
M. G. Ely Atty,

M. B. Rutherford
vs. { Brief of
 { Defendant,
J. F. Johnson et al

M. B. Rutherford.....Plaintiff.
)
 vs.)
)
J. F. Johnson, et al.....Defendants.

Supplemental brief of Geo. F. Cridlin, for defendants.

Estoppel.

It is shown by the deposition of Joseph F. Johnson that at the time he was negotiating the purchase of the 53 3/4 acre tract of land, M. B. Rutherford stated to him that the title there to was good, and there was nothing against it except the Elliot and Carroll interests. This statement was made by said Rutherford after he claims to have purchased the Rosetta Leedy share, and is made to the man who is negotiating a purchase of the land. After having made this statement to Johnson, Johnson purchased said land for himself and acting as agent for his wife, and paid for the same, and it would now be plainly inequitable and unjust to allow Rutherford to assert any title inconsistent with his representation to Johnson before he, Johnson, had concluded his purchase and parted with his money. It is a well established rule of law, recognized and enforced in all courts of equity, a person is barred from the assertion of a right or title, which some previous action or conduct on his part would render its present assertion unjust. Or as stated differently, where an act is done or a statement made by the party, under such circumstances, that to impair its efficacy or controvert its truth, would be contrary to justice and good faith, the result is that such party is debarred from asserting any right or title in opposition to any right which has been acquired in reliance upon such act or statement. See Bisp. Prin. of Equi. Sec. 290. This is the well known doctrine of estoppel. And under this rule, the assertion of an untruth, even, may operate to estop a party from subsequently setting up the truth. Hence it matters not now whether the statement made by Rutherford to Johnson was true or untrue, he cannot now be heard to set up a

different claim. (See Bisp. Trin. R. Sec. 282.)

"The maker of a note who tells a prospective assignee or purchaser thereof that there is no defense to it, is estopped to set up one in a suit by such person".

Davis Admr. v. Thomas 5 Leigh 1.

Acts of defendants in inducing others to purchase land which had previously been conveyed to defendants themselves, estop them to claim any rights under said deed to the prejudice of those whom they induced to purchase, or those claiming under them, where the purchaser acted in good faith, relying on defendant's acts, without notice or knowledge of the conveyance to defendants.

V. I. C. & C. Co. v. Roberts. 103 Va. 661.

One having any interest in or charge on land, knowing that another is about to purchase it, who declares to such person that he has no interest in the land, and that the one proposing to sell has the absolute right to the land, cannot set up any ownership, interest or charge, then existing, hostile to the right acquired by such purchaser.

Bots. v. Swiger (W. Va.) 21 S.E. 874.

Bodkin v. Arnold (W. Va.) 30 S.E. 154.

18 Cyc. p. 749-757.

Note 38 Am. Dec. 631.

LIMITATION.

The deed from J. K. E. Rutherford to T. H. Flanery was made _____ day of _____ 1911. This deed is a conveyance of the whole of said 53 3/4 acre tract of land, by metes and bounds, excepting only the interest of said Elliott and Carroll heirs. This suit was instituted on the _____ day of _____ 1911, more than ten years after the execution of said deed. And the proof shows that said T. H. Flanery and those claiming under, by and through him, have held the actual, exclusive, open, notorious,

continuous and adverse possession of said land, claiming title to the whole thereof, subject only to the exceptions in said deed, from the date of said deed down to the present time, and for more than ten years prior to the institution of this suit. And for more than years prior to the institution of this suit the plaintiff, M. B. Ruthenford, was the owner of this share of Rosetta Leedy, the same having been conveyed to him on the 4th day of July, 1900.

"A stranger who takes a conveyance of the whole estate in a tract of land conveyed to him by metes and bounds and enters into exclusive possession under such conveyance, claiming title to the whole, acquires at least color of title to the whole tract even though his grantor was only a tenant of the land, and, after the lapse of time necessary to bar a action of Ejectment, the right to rely upon his adversary possession, and is in no sense a co-tenant with the tenants in common of his grantor, and a Court of chancery has no jurisdiction of a suit for partition by such tenants in common, but even if the Court has such jurisdiction, the claim of the co-tenant being barred by the statute of limitations, the suit should be dismissed".

Johnson et al v. V.C. & I. Co. 96 Va. 158.

As to period of limitation of action to recover land
see Sec. 8915 C.V.

Respectfully submitted.

M. B. RutherfordPlaintiff.
)
vs.) IN CHANCERY. - Plaintiff's Brief.
)
J. E. Johnson, et al.....Defendants.

This is a suit for partition.

In the year 1882, Joel Leedy died in this County, intestate, possessed of a valuable real estate, on Chestnut Ridge about three miles west of Jonesville, and leaving a widow, Elvira Leedy, his second wife, and thirteen children, to whom his real estate descended, and soon after his death the said real estate was partitioned, and in said partition 76 acres was laid off and assigned to his widow, Elvira, including the mansion house, as her dower, and the residue of said real estate, outside of the dower, was partitioned among the heirs. The said widow survived her husband several years, and, in fact, has been dead only three or four years, and on the _____ day of _____ 18_____, she sold and conveyed to J.K. P. Rutherford her said dower interest for \$275.00. The said J.K. P. Rutherford also purchased from five of said heirs their undivided interests in the reversion in said dower, and M. B. Rutherford, the plaintiff, purchased from five of said heirs their undivided interests in the reversion in said dower, and on the 16th day of March 1891, the said J. K. P. Rutherford and M. B. Rutherford, the plaintiff, made a trade, or exchange of interests in said 76 acre tract of land, by which the plaintiff, M. B. Rutherford, conveyed to the said J. K. P. Rutherford the five undivided interests, or shares, owned by him in the reversion in said dower, valued at \$100.00, and the said J. K. P. Rutherford on the same day conveyed to the plaintiff 22 1/4 acres out of the interests owned by him in said tract of 76 acres, for the consideration of \$158.00; \$138.00 part thereof in hand paid, and \$20.00, the residue, to be paid in twelve months. Of the \$138.00 in hand paid, \$100.00 was the value of ^{the} five shares con-

veyed by the plaintiff to said J. K. P. Rutherford, and \$38.00 was paid in some other way, and the \$20.00 was afterwards paid, with some interest, and the plaintiff files J. K. P. Rutherford's receipt therefor with his deposition. The plaintiff went into possession of the 22 1/4 acres at once, March 16th 1891, made valuable permanent improvements thereon, building and repairing a dwelling house, and erecting other buildings thereon, and has resided on said land ever since. The deeds between the parties, each dated March , 16th 1891, show the transaction between the parties, and it will be observed that the deed from J. K. P. Rutherford to the plaintiff conveys the 22 1/4 acres by metes and bounds, and the proof shows that it was surveyed for the purpose by C. C. Elliott, and the conveyance is in fee simple and absolute, ^{with general warranty,} and the 22 1/4 acres was that much of the interests then owned by the grantor, including the five shares conveyed to him that day by the plaintiff, ^{then} he being the owner of ten out of the thirteen undivided interests in the reversion in said dower, and also the dower.

At the time of this trade between the said J. K. P. Rutherford and the plaintiff, March 16th 1891, there were three undivided interests unsold by the heirs in the reversion in said dower, viz: Mrs. Carroll's, Mrs. Elliott's and Rosetta A. Leedy's interests. Rosetta A. Leedy was at that time, March 16th 1891, a minor under twenty-one years of age, and did not become of age until the _____ day of _____, 1900, and on the 4th day of July 1900, the plaintiff purchased from her, her undivided interest, 1/13, in the reversion in said dower, and took from her a deed for same, a copy of which is exhibited with the bill. Mrs. Mandana Carroll (nee Leedy) and Mrs. Selina Elliott (nee Leedy) died, without having sold and conveyed their undivided interests in the reversion in said dower, and each leaving children to whom their interests descended. Some of these heirs of Mrs. Carroll and Mrs. Elliott have sold their interests in said 76 acre tract; and J. K. P. Rutherford sold and conveyed all his

interests in said tract to T. H. Flanary and T. H. Flanary to Charles Rutherford, and Charles Rutherford to Joseph F. Johnson and Lizzie Johnson his wife, and Lizzie Johnson has died and her interest descended to her children as set forth in the bill. Dock Carroll, one of Mrs. Carroll's children still owns his interest- $\frac{1}{3}$ of $\frac{1}{13}$, and John Elliott, one of Mrs. Elliott's children, still owns his interest- $\frac{1}{7}$ of $\frac{1}{13}$. All of which is set forth in the bill and not contradicted.

It will be observed that in the deed from J. K. P. Rutherford to T. H. Flanary, the fact is admitted that the interests of some of the heirs were outstanding, and Flanary reserves the right to hold back enough of the purchase money to cover these interests.

The answer of defendant, Joseph F. Johnson, undertakes to set up some kind of a verbal agreement between J. K. P. Rutherford and the plaintiff, contrary to, and in conflict with the deeds between the parties. It is hard to ascertain from the answer just what is claimed, but said answer is excepted to, and the verbal evidence attempted to be introduced in behalf of the defense to contradict, or vary, or in conflict with, the written contracts between the parties as shown by the deeds, was also excepted to as inadmissible, and this position is most earnestly insisted upon: In 80th Va. page 259: The Court says, "Where a contract is perfect in itself and its terms are clear and intelligible, parol testimony is inadmissible to contradict, vary, or materially to affect it by way of explanation". The deed for the 22 $\frac{1}{4}$ acres of land is a perfect conveyance to the plaintiff for the consideration mentioned therein and cannot be contradicted, added to, or varied by parol evidence.

In the case in 82 Va. page 352. The Court says: "Parol evidence is inadmissible to contradict, vary, or add to a written instrument". But is admissible as to the delivery of the deed and the payment of the purchase money. In the case here there is no question

as to the delivery of the deed and no question as to the payment of the purchase money, except J. K. P. Rutherford says he does not know how the \$158.00 (consideration) happened to be mentioned. The plaintiff does know and states clearly as to the transaction, and is corroborated and supported by the deeds between the parties and the receipt for the \$20.00 balance of purchase money.

In 107 Va. page 576. The Court says: " In an action to recover the consideration of a deed, the consideration actually paid or promised can be shown by parol to have been other than that recited in the deed, or the fact of the payment of the consideration agreed may be contradicted, but parol evidence is inadmissible to alter or contradict the legal import of a deed. The legal import of a deed can no more be contradicted by parol evidence than its actual expressions".

There is not a scintilla of evidence in the written contracts showing, or tending to show, that the plaintiff was to purchase the interest of Rosetta A. Leedy, in the 76 acre tract, to complete his title to the 22 1/4 acres conveyed to him by J. K. P. Rutherford, under a most solemn covenant of general warranty, as shown by the deed. This sale and conveyance was out of the interests then owned by J. K. P. Rutherford. He then owned 10/13 of the reversion, and the dower, and there is no stipulation or agreement in the deeds that the parties should buy certain of the outstanding interests, or should not purchase certain of said interests. And if such an agreement had been made, or attempted, it would have been invalid, Rosetta A Leedy, and the Carroll children and Elliott children had a right to sell to whom they pleased, and any attempted verbal agreement between the Rutherfords to control that right would have been nonsensical. The deeds between the parties are the best evidence of what the transaction was, and they are binding and conclusive upon the parties. The defendant's witnesses, Wygal, Harber, and Graham, in their depositions, when an attempt was made to prove that the

plaintiff had admitted some oral agreement, state that the plaintiff said he relied upon his deeds. And the plaintiff makes flat denial in his deposition of any oral agreement such as is sought to be shown by defendants. And J. K. P. Rutherford in his deposition shows that he does not know what he is talking about. He either knows very little about the transactions about which he undertakes to speak, or he wilfully states falsely as to those transactions. See how he contradicted himself about the shares he owned and that the plaintiff owned. He states that at the time he and plaintiff traded, the plaintiff owned five shares and bought three afterwards, when plaintiff's deed conveys five shares to him and he admits and states afterwards that plaintiff was to buy only one other share, that of Rosetta A. Leedy's. His deposition shows the importance of giving to written contracts the weight accorded them by law, and of excluding oral evidence intended to contradict, vary or alter such written contracts. He does admit one important fact on page #8 of his deposition. The fact he sold and conveyed to the plaintiff the 22 1/4 acres of land, but the deed shows this, and doubtless if he had thought he could successfully contradict this fact, he would have tried to do so.

It is respectfully submitted that the plaintiff is entitled to the 22 1/4 acres as conveyed to him by J. K. P. Rutherford out of the interests then owned by J. K. P. Rutherford, and that he is entitled to have the interest purchased by him from Rosetta A. Leedy in the 76 acres laid off adjoining said 22 1/4 acres, and to be taken out of that portion of the 76 acres outside of the 22 1/4 acres, and that Dock Carroll and John Elliott are entitled to have their interests, as set forth in the bill, laid off and assigned to them out of the 76 acres outside of the 22 1/4 acres; and that the residue of the tract should be assigned to Joseph F. Johnson and the children of his wife, Lizzie Johnson, one moiety to each, with a life estate to Joseph F. Johnson in the moiety assigned to

his said wife's children; and that plaintiff's right of way as provided in his deed from J. K. P. Rutherford and wife from his house to the main road through said real estate be laid down and defined in the partition of said land. And in said partition the same should be made without any reference to the improvements made on said land, either by the plaintiff or defendants, Johnson and wife. And that the costs of this suit be paid by the parties interested according to their respective interests, including an attorney fee of \$25.00 to plaintiff's counsel, except as to the costs of the depositions taken on the litigated question, which should be paid by defendants.

James W. Orr Jr. qf.

M. B. Rutherford.

vs. { Pp's brief.

J. F. Johnson et al.

M. B. Rutherford.....Plaintiff.
) vs.)
) J. F. Johnson, et al.....Defendants.

Supplemental brief of Geo. F. Cridlin, for defendants.

Estoppel.

It is shown by the deposition of Joseph F. Johnson that at the time he was negotiating the purchase of the 53 3/4 acre tract of land, M. B. Rutherford stated to him that the title there to was good, and there was nothing against it except the Elliot and Carroll interests. This statement was made by said Rutherford after he claims to have purchased the Rosetta Leedy share, and is made to the man who is negotiating a purchase of the land. After having made this statement to Johnson, Johnson purchased said land for himself and acting as agent for his wife, and paid for the same, and it would now be plainly inequitable and unjust to allow Rutherford to assert any title inconsistent with his representation to Johnson before he, Johnson, had concluded his purchase and parted with his money. It is a well established rule of law, recognized and enforced in all courts of equity, a person is barred from the assertion of a right or title, which some previous action or conduct on his part would render its present assertion unjust. Or as stated differently, where an act is done or a statement made by the party, under such circumstances, that to impair its efficacy or controvert its truth, would be contrary to justice and good faith, the result is that such party is debarred from asserting any right or title in opposition to any right which has been acquired in reliance upon such act or statement. See Bisp. Prin. of Equi. Sec. 280. This is the well known doctrine of estoppel. And under this rule, the assertion of an untruth, even, may operate to estop a party from subsequently setting up the truth. Hence it matters not now whether the statement made by Rutherford to Johnson was true or untrue, he cannot now be heard to set up a

different claim. (See Bisp.Prin.Eq. Sec.282.)

" The maker of a note who tells a prospective assignee or purchaser thereof that there is no defence to it, is estopped to set up one in a suit by such person".

Davis Admr. v.Thomas 5 Leigh L.

Acts of defendants in inducing others to purchase land which had previously been conveyed to defendants themselves, estop them to claim any rights under said deed to the prejudice of those whom they induced to purchase, or those claiming under them, where the purchaser acted in good faith, relying on defendant's acts, without notice or knowledge of the conveyance to defendants.

V. I. C. & C.Co. v.Roberts.103 Va. 661.

One having any interest in or charge on land, knowing that another is about to purchase it, who declares to such person that he has no interest in the land, and that the one proposing to sell has the absolute right to the land, cannot set up any ownership, interest or charge, then existing, hostile to the right acquired by such purchaser.

Bots. v.Swiger (W.Va.) 21 S.E. 874.

Bodkin v. Arnold (W.Va.) 30 S.E.154.

16 Cyc. p.749-757.

Note 38 Am.Dec.631.

LIMITATION.

The deed from J. K. P. Rutherford to T. H. Flanary was made _____ day of _____ 1_____. This deed is a conveyance of the whole of said 53 3/4 acre tract of land, by metes and bounds, excepting only the interest of said Elliott and Carroll heirs. This suit was instituted on the _____ day of _____ 1911, more than ten years after the execution of said deed. And the proof shows that said T. H. Flanary and those claiming under, by and through him, have held the actual, exclusive, open, notorious,

continuous and adverse possession of said land, claiming title to the whole thereof, subject only to the exceptions in said deed, from the date of said deed down to the present time, and for more than ten years prior to the institution of this suit. And for more than 10 years prior to the institution of this suit the plaintiff, M. B. Rutherford, was the owner of this share of Rosetta Leedy, the same having been conveyed to him on the 14th day of July, 1900.

" A stranger who takes a conveyance of the whole estate in a tract of land conveyed to him by metes and bounds and enters into exclusive possession under such conveyance, claiming title to the whole, acquires at least color of title to the whole tract even though his grantor was only a tenant of the land, and, after the lapse of time necessary to bar an action of Ejectment, has a right to rely upon his adversary possession, and is in no sense a co-tenant with the tenants in common of his grantor, and a Court of chancery has no jurisdiction of a suit for partition by such tenants in common, but even if the Court has such jurisdiction, the claim of the co-tenant being barred by the statute of limitations, the suit should be dismissed".

Johnson et al v. V.C. & I.Co. 96 Va. 158.

As to period of limitation of action to recover land see Sec. 2915 C.V.

Respectfully submitted.

W. L. Garrison the
Adm. Legals Brief
1833
W. B. H. H. H. H.

Criddle

M. B. Rutherford.....Plaintiff.
vs.)
) REPLY BRIEF OF PLAINTIFF.
)
J. F. Johnson, et al.....Defendants.

Defendants counsel, Mr. Ely, in his brief, tries to impress his contention that there was a partition of the 76 acres of land between plaintiff and J. K. P. Rutherford, and says that plaintiff is asking for a second partition &c. By our Statute, Code Sec. 2413. No voluntary partition of lands by co-parceners, can be made, except by deed. The fact is, as shown by the two deeds of March 16th 1891, and the testimony of the parties, that the plaintiff and J. K. P. Rutherford made an exchange of lands or interests in the 76 acre tract, upon the terms and at the valuation, and for the considerations, stated in said two deeds: The plaintiff conveying five undivided interests, or shares, in said tract, to said J. K. P. Rutherford and he conveying 22 1/4 acres to plaintiff.

The plaintiff then owned only five shares, and nine years afterwards he bought Rosetta A. Leedy's share, as soon as she became of age, and these six shares are all the plaintiff ever purchased, or owned, or claimed. And J. K. P. Rutherford, at the time of said exchange, owned five shares, as understood by plaintiff. We cannot understand why they want to give plaintiff three shares more than he claims or ever owned. Counsel for defendants labor hard, to set up some oral agreement between plaintiff and J. K. P. Rutherford in order to defeat the plaintiff in holding his 1/13 purchased from Rosetta A. Leedy, but we think that they have utterly failed for the reasons stated in our first brief.

Mr. Cridlin's brief on Estoppel and Limitation is all right if it fit the case. But, unfortunately for defendants, it does not apply in this case. It will be seen from J. F. Johnson's deposition, on cross-examination on page 11, Mr. Johnson says, "plaintiff said that Dock Carroll and John Elliotts shares was all there was

in it that was not bought". This was what was said by plaintiff as corrected by the witness, on cross-examination, and he did not disclaim any interest in the land on account of his deed from Rosetta A. Leedy, and was not called on to state, and Johnson is presumed to know, what was outstanding as his vendors knew, and excepted certain interests in their deeds. Johnson was not buying, but was trying to sell, and there is nothing showing that the purchaser was misled by any statement made by plaintiff. No sale was made. And plaintiff's deed from Rosetta A. Leedy was on record.

The deed from J. K. P. Rutherford (J.F.J.#1) to T. H. Flanary does not except, only, the interests of said Elliott and Carroll heirs. It contains this exception: "And it being admitted that said J. K. P. Rutherford has not as yet secured deeds from some of the heirs of Joel Leedy, Dec. it is agreed that the said T. H. Flanary shall hold a sufficient amount in his hands out of the last deferred payment to compensate him in securing the title from said heirs". Doubtless Rosetta A. Leedy's interest was one he had in mind, as well as the Carroll and Elliott interests, but the plaintiff purchased Rosetta A. Leedy's interest as he had a right to do.

As to the Statute of Limitations.

It is true that ~~that~~ plaintiff purchased Rosetta A. Leedy's interest, July, 4th 1900, being her interest in the dower that descended to her as an heir at law of Joel Leedy, deceased. This, of course, was her interest in the reversion in said dower, as no interest in the dower could or did descend to her as such heir. And the plaintiff was not entitled to possession, or to bring his suit, under that deed until the death of the widow, Elvira Leedy, which, according to the proof, occurred only about three years ago. And no limitation ran against anyone interested in said reversion, and no ^{had} one, so interested, a right to sue, until after her death, if it could

run at all, even then, under the circumstances of this case, against a coparcener in possession, In 4th Gratton page 16, the Court says: " The possession of one coparcener or tenant in common being the possession of all, none in possession of the whole subject can avail themselves of such possession, as a defense under the statute of limitations, against the rest, without an actual disseisin or ouster of their coparceners or tenants". And the statute of limitations is in no manner invoked, or plead, or set up in defendants' answers. In 2d Leigh page 6, the Court says: " The Statute of Limitations cannot be insisted on in Equity without being plead, or in some form relied on as a defense, in the pleadings". We consider plaintiff's right to partition under his deed from Rosetta A. Leedy clearly established.

Respectfully,

James W. Orr p.q.

M. B. Rutheford.

vs ³ Puffs Reply Brief.
- (Am.)
J. F. Johnson et al.

In the Clerk's Office of the Circuit Court of the County of
Lee,

M. B. Rutherford,
Plaintiff

against

Joseph F. Johnson, et al.,
Defendant

In Chancery

This day M. B. Rutherford personally appeared
before me W. E. Flanary, Deputy for H. C. Tewing Clerk of the said Court,
and being duly sworn, made oath that John Elliott & Dock Car-
roll,

are
defendant^s in the said suit 1 not resident^s of the State of Virginia,

Given under my hand as Deputy Clerk of the said Court, this 3rd day of July, 1901.

W. E. Flanary, Deputy for
H. C. Tewing, Clerk.

M. B. Rutherford

VS } AFFIDAVIT FOR ORDER
OF
PUBLICATION

J. F. Johnson, et al,

Jas. W. Orr, p. q.

Filed July 3, 1911-
H. C. Ewing,
Clerk.

In the Clerk's Office of the Circuit Court of the county of Lee, on the 6th
 day of July, 1901.

M. B. Rutherford,

against

Plaintiff

In Chancery

Joseph F. Johnson, et al,

Defendant s.

The object of this suit is to partition the land in the bill
mentioned among the parties entitled there
to, it being a portion of the Joel Leedy land,

And an affidavit having been made and filed that the defendant s. John Elliott and
Dock Carroll are
 not resident s. of the State of Virginia, it is ordered that They do appear here within fifteen days
 after due publication hereof, and do what may be necessary to protect Their interest in this suit. And it is
 further ordered that a copy hereof be published once a week for four successive weeks in the Jonesville
Star — and that a copy be posted at the front door of the Courthouse of this county as prescribed

by law.

A copy—Teste:

James W. Orr,

p. q.

J. C. Ewing, Clerk.
By M. H. Hasty, S.C.

M.B. Rutherford

vs.

}

ORDER OF
PUBLICATION

Joseph F. Johnson, et al

Va., Lee County, to-wit
J. S.A.S. Ewing, Clerk
of the Court for the
County aforesaid, in
the State of Va., do
hereby certify that I
posted a true copy
of the within order
of publication at
the front door of the
Court house of said
County on this day.

Given under my
hand, this the 6th
day of July, 1911.

J.A.S. Ewing,
Clerk.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting;

WE COMMAND YOU, That you summon

*Joseph F. Johnson, Ethel Johnson,
Olin Johnson, Bradley Johnson, Roy Johnson,
Herbert Johnson, Truman Johnson, John
Elliott and Dock Carroll.*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on

the *3rd* Monday in *April* 191*1*, to answer a bill in chancery exhibited against

them in our said Court by M. B. Ruthenford.

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *28th*

day of *March*, 191*1*, and 1*35*th year of the Commonwealth.

A Copy. Teste:

H. C. T. Ewing, Clerk

_____, Clerk

1 Ethel Johnson
2 Olin Johnson
3 Bradley Johnson
4 Roy Johnson
5 Herbert Johnson
6 Truman Johnson

M. B. Ruthinford

SUBPOENA

VS

IN CHANCERY.

Joseph F. Johnson, et al,

James W. Orr, p. q.

To 2nd April Rules
Circuit Court.

1911
Executed by delivering
a true copy of the
within summons
To Joseph F. Johnson
This April 15, 1911
W. G. Tucker S. & L.

Order of Publication.

In the Clerk's Office of the Circuit Court
of the county of Lee, on the 6th
day of July, 1911.

M. B. RUTHERFORD, Plaintiff,
against

JOSEPH F. JOHNSON, et al, Defendants
In chancery.

The object of this suit is to partition
the land in the bill mentioned among
the parties entitled thereto, it being a
portion of the Joel Leedy land. And an
affidavit having been made and filed
that the defendants, John Elliott and
Dock Carroll, are not residents of the
State of Virginia, it is ordered that they
do appear here within fifteen days after
due publication hereof, and do what
may be necessary to protect their in-
terest in this suit. And it is further
ordered that a copy hereof be published
once a week for four successive weeks
in the Jonesville Star and that a copy
be posted at the front door of the Court-
house of this county as prescribed by
law.

A copy—Teste:

H. C. T. EWING, Clerk.

By M. E. FLANARY, D. C.

JAMES W. ORR, p. q.

M. B. Rutherford

vs

in chancery

Joseph F. Johnson



I, J. C. Bunting, editor

of The Jonesville Star, a weekly newspaper
published in the county of Lee, state of Virginia,
do hereby certify that the enclosed notice was
published in said paper once a week for four
successive weeks, commencing on the 13

day of July 1911

J. C. Bunting, Editor.

FEE \$ 6.00